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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Law of Property Bill.

IT WILL HAVE been noticed that the King's Speech concludes with a statement that the proposals which were submitted to Parliament last year will again be laid before it for the amendment of the law relating to Real Property and to the methods of Land Transfer. We understand that the Bill has been carefully considered since last year and it may be anticipated that the changes which have been made in it will remove some of the criticisms which it has aroused. In the present unsettled state of the political world it is unsafe to hazard any prediction as to its passage this session, but it may be hoped that there will be time for it to receive the consideration in the House of Commons which it failed to secure last year. The most important of the other measures mentioned in the King's Speech is the Criminal Law Amendment Bill, and this was introduced by the Home Secretary in the House of Commons on Wednesday. And there are to be proposals for the Reform of the House of Lords, and for the adjustment of differences between the two Houses.

The Balance Sheet of the Washington Conference.

THE WASHINGTON Conference has ended and there is, perhaps, a natural tendency to emphasize the undoubted greatness of its achievements rather than of its disappointments. Its main achievements are the Five-Power Treaty (U.S., British Empire, France, Italy, and Japan) for the limitation of naval armaments, and the Four-Power Treaty (the same except Italy) for the neutralization of the Pacific. The disappointments are that limitation of land armaments has not also been secured—a matter vital for Europe—and that the disarmament of Germany under the Treaty of Versailles has not had its natural consequence in disarmament elsewhere; that the limitation of naval armaments has not included a limitation of submarines; and that the use of aircraft in war and of poison gas have not been prohibited. On the other hand, the failure to restrict submarines in number has been balanced by the adoption of the ROOT resolutions which, if

adhered to in practice, will rob the submarine of much of its effect. Moreover, the failure to secure a limitation of land armaments is already treated as a reason for renewing the work of the Conference in the future, and, moreover, such limitation is the proper work of the League of Nations. The public opinion of civilized countries will not be satisfied until the spectre of war, save as a matter of police under the authority of the League of Nations, is finally banished. In this respect the politicians lag behind.

The Prohibition of Submarines as Commerce Destroyers.

TO LAWYERS the most interesting result of the Conference is the Treaty—though we are not sure of the exact status of this agreement—which requires submarines to conform to the recognized rules of naval warfare in regard to merchant vessels; that is, a merchant vessel, unless she disobeys a warning to stop, must first be searched in order to ascertain her character, and she must not under any circumstances be destroyed unless the passengers and crew are first placed in safety. This is founded on a resolution proposed by Mr. ELIHU ROOT, and it has carried as a corollary another resolution, namely, that submarines may not be used as commerce destroyers, since they cannot act in that capacity without violating the rule just stated for the protection of the lives of neutrals and non-combatants. We gather that this resolution at once becomes effective as between the five Conference Powers, without waiting for the assent of other nations. It may be remarked that the Treaty now made is in accordance with the views of jurists and publicists, and as an example we may refer to the paper on Submarine Warfare read by Admiral HALL before the Grotius Society in 1919, and printed in Vol. 5 of the Transactions of the Society. It appears that further questions as to the rules of war—either as to submarines or generally—are to be referred to a Commission of Jurists, but the available information as to this is not very definite. In a letter to *The Times* of the 2nd inst., Dr. PEARCE HIGGINS points out the conditions under which such a Commission should act. It must receive carefully thought out instructions from the countries interested, and must bear in mind that rules of warfare are liable to yield to the stress of exceptional circumstances. As was pointed out by Mr. CLYNES in the House of Commons on Tuesday—though, indeed, it is matter of common knowledge—devices for humanizing war are useless so soon as any combatant reaches a state of despair. In fact, the work begun by GROTIUS, which at one time promised useful results, failed when it was most needed, and it may be doubted whether any Commission of Jurists can remedy the failure. War cannot be humanized. The question is whether man has wit and civilization enough to do without it.

The Report of the Clearing Office.

THE FIRST Report of the Clearing Office (Germany) was issued towards the end of last year, but hitherto we have not referred to it. It will be convenient to do so now in connection with the question of the claiming of interest on English debts to German creditors which was raised by Messrs. POWELL & SKUES last week, a claim which, we understand, the British Clearing Office considers is fully justified. The Clearing Offices, as is well known, have been established under Part X, Sect. III, Art. 296, of the Versailles Treaty, and the Treaty of Peace Order, 1919 (64 SOL. J., 36). Pre-war debts as between British and German subjects are collected through the Clearing Offices and it is an offence to attempt to recover them in any other way. Under paragraph 6 of the Annex to Sect. III, as soon as a debt is admitted the Debtor Clearing Office at once credits it to the Creditor Clearing Office. Under Art. 296 (4) (b) each Government is responsible for the debts of its subjects except in the case of pre-war insolvency. The practical working of the system is explained at p. 6 of the Report. Put shortly, it is that, subject to the exception just mentioned, the British Clearing Office, upon admission of a debt by a British debtor, gives credit to Germany for the amount so admitted, irrespective of whether or no it can be collected. At the end of each month a balance of debits and credits, called "the Monthly Account," is prepared, and if the balance is in favour of this country, Germany has, under the Treaty, to pay the amount to the British Clearing Office in cash. At the date of the Report a net sum of £18,069,746 had so been paid. But if the balance is in Germany's favour, no payment is made to Germany, but the amount is carried to her credit in the next account. Any balance ultimately standing to the credit of Germany will be retained until payment of all sums due to the Associated and Allied Powers or their subjects on account of the war. The net result is that no actual cash ever goes to Germany, and, since the British Government guarantees British debts, any default by British debtors to meet their obligations has to be made good out of Clearing Office funds to the extent to which these are available.

The Working of the Office.

THE REPORT deals with complaints that have been made against the Clearing Office, and classifies them as (A) Delay in payment of claims; (B) Demand for payment of interest on debts owing to Germany, and (C) the charge of 2½ per cent. commission. The explanation as to (A) is, shortly, that while in many cases there has been undue delay, the department is not to blame. It is due to the vast number of claims, and to the time taken in dealing with them. On this side the Claims branch has been in a chronic state of staff shortage owing to the singular requirement that it must be manned by ex-service men who are British born sons of British born parents (*see* Report, p. 2). Such requirements always militate against efficiency, and especially in businesses depending on a knowledge of foreign languages. And there has been delay on the other side, in which connection it is noted that the German Clearing Office has to deal not only with British claims, but with those of most of the Allies. As to (C), par. 9 of the Annexe to Art. 296 authorizes the Creditor Clearing Office to "retain any sums considered necessary to cover risks, expenses or commissions." In pursuance of this, Clause 1 (vi) of the Order of 1919 authorises it to deduct such commission, not exceeding 2½ per cent., as the Clearing Office may fix. The Clearing Office has fixed the full sum, and one reason assigned is that, besides meeting the expenses of the department, it forms the fund to meet bad debts guaranteed by the British Government. The soundness of this is very questionable. There seems to be no justification for imposing the deficiency on British creditors, and the amount retained must be enormous. On the cash payments referred to above, it is nearly half a million, and this only represents balances.

The Payment of Interest on Debts to Germany.

THE PAYMENT of interest on debts owing to Germany appears to have been the subject of complaint, but it is clearly required by the Treaty. Under par. 22 of the Annex to Art. 296 interest runs from the date of commencement of hostilities until the sum is credited to the Clearing Office of the creditor, and the rate is at 5 per cent. per annum, except in cases where, by contract, law, or custom, interest runs at a different rate. In cases where, apart from the Treaty, no interest would run, this is an obvious hardship, and hardship may arise on other grounds. This the Report admits, but says that it has no power to waive the obligation, though it has always been prepared to grant the utmost indulgence in such cases in the direction of delaying its enforcement. But while interest clearly runs, the question raised last week relates to the date to which it runs. As to this, we have seen the provision of par. 22 is express; it runs until the sum is credited to the Creditor Clearing Office, and under par. 6 it is to be so credited directly the debt is admitted. Moreover, as stated above, the Report shows that this procedure is followed, and that on admission of the debt by the British debtor, the British Clearing Office "gives credit to Germany for the amount so admitted, irrespective of whether or no it can be collected." Our correspondents last week pointed out that the Clearing Office did not give effect to par. 22, which allows interest only until the sum

is credited to the Creditor Clearing Office—that is, until the debt is admitted. We understand that the Clearing Office takes the view that the crediting of the debt to Germany by the British Clearing Office is not a mere paper transaction, but in reality implies what is equivalent to an actual transfer of the sum in question. But this is not the meaning of "crediting" a sum, nor is it the meaning given to the expression in the Report. There may be a good deal to be said from a practical point of view for making interest run till actual payment. For one thing, the Clearing Office has power under clause 1 (iv) of the Treaty of Peace Order to enforce the debt "together with such interest as is payable under par. 22," and a debtor may be willing to purchase delay by paying additional interest. But this he should do with a clear knowledge of the position. As far as we see at present, the Clearing Office has no title to charge interest after the debt has been admitted.

Interpleader and the Crown.

THE COURT OF APPEAL has affirmed the important decision of Mr. Justice HILL in *s.s. "Mogileff"* (*ante*, p. 250), on which we have already briefly commented. The point which arose was whether or not the Crown, at the instance of a sheriff who has seized goods, can be made a party to proceedings by way of Interpleader. The decision was that the Crown cannot be made a party, since Order 57 of the Supreme Court Rules, which prescribes the procedure, does not bind the Crown and would probably be *ultra vires* if it purported to do so, inasmuch as the Petition of Right Act does not provide for any such process where the Crown is concerned. This seems fairly obvious. Probably the case would not have been appealed at all but for a passage which seemed to help the appellant, in the judgment of Vice-Chancellor STUART in *Reid* v. *Stearn* (1860, 6 Jur. N.S. 267). That case was a suit instituted by the plaintiff against four defendants claiming the return or payment of a sum of money, or a direction that the defendants might be decreed to interplead; one of the four defendants was the Crown, for apparently the representative of the Crown consented to the jurisdiction and appeared as a party before the court. In these circumstances, the following remarks of Vice-Chancellor STUART occurred in his judgment (*supra*, at p. 268): "[that he] conceived, if the Crown was adversely claiming against the stakeholders, that they had a right, when other persons were claiming the same money, to file a bill of interpleader, and to make the Crown a defendant to the bill, because the Crown was *one of the parties . . . contesting the right* . . . He should not hold that the Crown was an improper party. He thought that the bill had been rightly framed, in bringing all the defendants before the court." It is obvious that the crux of these remarks turns on the meaning to be attached to the words we have italicized, namely, "one of the parties . . . contesting the right." If this means that, wherever the Crown contests the rights of other claimants to property in the possession of a third party, it can be made a party to interpleader process, then the remark must have been made *per incuriam*. But if it merely means that in the particular case, where the Crown had appeared to contest the issue on the interpleader, it must be held to have waived its right to object to the jurisdiction, then the decision is manifestly correct. In either view, the passage quoted does not support the revolutionary contention that the Crown can be made a defendant to any process not originating as a Petition of Right.

Income-Tax and Separation Deeds.

A HUSBAND'S liability to pay the income-tax of his wife, while she is not in law living apart from him, has long been an obvious injustice which no amount of logical argument seems to succeed in redressing. Probably this is due to the fact that a wife's income, in the past, has usually come from sources where it is deducted before payment to her, so that the liability is nominal only; but, nowadays, when married women follow professions, carry on businesses, and occupy land, this is no longer the case, and much hardship actually results. A conscienceless wife can easily use this provision as a lever in domestic diplomacy to secure some unjust advantage at the expense of her husband. A less serious difficulty is familiar to lawyers who have occasion to draft separation deeds; here it has long been the practice for the husband to covenant that he will pay a certain sum, free of income-tax, to his wife. The convenience of so doing is obvious. But it is necessary to draft the deed carefully in view of Rule 23 in the "All Schedule Rules" of the Income Tax Act, 1918, which provides: "(1) a person who refuses to allow a deduction of tax authorized by this Act to be made out of any payment, shall forfeit the sum of fifty pounds; (2) Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction shall be void." In *Booth* v. *Booth* (*ante*, p. 251), a husband had covenanted in the separation deed to pay his wife "such weekly sum as shall, after deduction of income-tax, amount to £260 per annum." It was contended that this provision was a covenant to pay the amount free of income-tax, and was therefore void, under the rule just quoted. The point was contested in the Oldham County Court, where the judge accepted this view, purporting to follow certain *dicta* in *Blount* v. *Blount* (1916, 1 K.B. 230). But the Divisional Court, on appeal, took the commonsense view that the real meaning of the covenant was a promise to pay such sum as, *after deduction of tax*, would amount to £260 per annum, and so held the covenant to be valid. All the same, it would be well in practice to adopt a clearer form of words in drafting such a covenant.

Doctor Johnson as a Jacobite Rebel.

DOCTOR JOHNSON, although not a lawyer, is a figure so closely connected with the legal profession in both its branches, that every legal practitioner will be interested in the novel theory about one period of his life, just put forward by a distinguished solicitor, Sir CHARLES RUSSELL, in the current issue of the *Fortnightly*. Sir CHARLES collects a mass of evidence, all circumstantial, of course, to show that Dr. JOHNSON must have taken part in the rebellion of 1745-6. It has long been a matter of comment among biographers of JOHNSON that nothing whatever is known of JOHNSON'S life in the year 1745-46. He wrote nothing at all during those two years, although his publications were numerous in the preceding three and the succeeding three years; in 1747 he produced several works although then occupied with his Dictionary, which he had not commenced in 1746. No letters of his for the year in question are extant, again a quite unique circumstance in his career. BOSWELL could find nothing about his movements in those years, and JOHNSON resented questioning about them. Moreover, it was in 1746 that JOHNSON brought to his home LEVETT, the weird physician who remained with him to the end of his days, who had been a Paris waiter and was an ardent Jacobite. JOHNSON always resented any attempt of BOSWELL to enquire of LEVETT about the commencement of their common acquaintance; the suggestion is that they were Jacobites and were out together in "45," in which year LEVETT came from Paris to London. JOHNSON, as BOSWELL narrates, kept in a closet a "musket, belt, and sword," which he explained away, on BOSWELL happening to discuss them, by saying that he had once been drawn for the London trainbands at the military ballot and had then acquired these articles, but had managed to escape service: Sir CHARLES RUSSELL shows strong grounds for disbelieving this explanation. In those days, of course, any man "out" with the Jacobites was liable to execution; Dr. CAMERON was discovered to have been "out" eight years after the episode was over; he was tried and hanged, an incident which greatly distressed and enraged JOHNSON. Temple Bar was covered with the heads of rebels, and JOHNSON would naturally be too discreet to mention any share of his in the rising. In 1784, in his old age, JOHNSON took roundabout and surreptitious steps to secure the pocket book of FRANCIS STEWART, just then deceased, a former go-between of the Jacobites and the Pretender in 1745; JOHNSON'S object was to get an old letter of his which was in STEWART'S possession, and which he at once destroyed on recovering it, telling BOSWELL that it was of no

interest to anyone else but of the utmost importance to himself. There are other lesser indications of the same kind. Of course, the case is only one of suspicion; but the evidence put forward by Sir CHARLES RUSSELL is well worthy of careful consideration. The theory, we should add, had already been suggested by the notorious JOHN WILSON CROKER.

Doctor Johnson's Connection with the Law.

WE NEED hardly inform readers of "Boswell," who include all members of the legal profession in both its branches, that Dr. JOHNSON was for many years of his life anxious to become a member of the bar. Living near Fleet Street, dining daily at the "Cock" and the "Cheshire Cheese," where lawyers greatly did congregate, he must naturally have felt a longing to join the great fellowship of the Temple, and must often have been encouraged so to do. But entrance to an Inn of Court was much more difficult in those days than it is now. As Lord CAMPBELL informs us, even at the beginning of the Nineteenth century, the Benchers still refused to call anyone who did not possess the right to use armorial bearings, and this right, although it could be purchased, cost far more money than a poor man like JOHNSON then possessed. Moreover, he had left Oxford without a degree; another fatal obstacle in those days. The question of fees probably did not really deter him; some kind friend would have stood sponsor for the forty guineas then required. Baulked of his ambition to enter an Inn of Court, he endeavoured to obtain admission to the Ecclesiastical Bar, by entrance as a Doctor at Doctors' Commons. But the degree of LL.D. was necessary and this JOHNSON did not possess. Several attempts were made by patrons to obtain the honorary degree of Doctor for him from all sorts of universities; BURKE, we believe, tried to interest Dublin in his favour; but it was not until he had become famous through his Dictionary that he at last succeeded in obtaining the coveted distinction. By that time, of course, he was too old. Moreover, he was already famous and had a handsome pension from the King, sufficient for all his modest luxuries. But when BOSWELL, soon after their acquaintance commenced, excitedly suggested that JOHNSON had all the qualifications for forensic success, the great man shut him up angrily, saying, "Why talk of this, now that it is too late?" No doubt he felt the spirit of the old lines: "All comes to him who learns to wait; All comes—but ever comes too late."

Suspected Persons under the Prevention of Crime Act.

THE RECENT case of *Rex* v. *Dearman* (*Times*, 8th inst.) suggests once more the grave danger of proceedings under the Prevention of Crime Act, which enables the court to convict a man on mere suspicion of the police, if being a "suspected person" found on premises, or as "loitering with intent to commit a felony." In this case two men, Dearman and Benton, were charged at Wood Green police-court with being "suspected persons" who had visited Palmers Green for the purpose of housebreaking. Benton was convicted summarily and received a sentence of three months imprisonment; whereas Dearman was committed for trial at Middlesex Sessions. In the meantime evidence of the innocence of the men became available and Dearman was acquitted; it was shown that both men had visited Palmers Green with the object of purchasing the house they were suspected of intending to break. The Chairman intimated that he would send a report of the evidence to the Home Secretary to aid a petition, already sent in asking for Benton's release. The obvious moral is that the conviction of men on mere suspicion is always undesirable, and that miscarriages in the case of such an offence must always occur.

The death took place at Brighton, on 2nd February, of Mrs. Kenealy, widow of the famous Dr. Edward Vaughan Kenealy, Q.C., M.P., claimant's counsel in the Titchborne case of 1873-4. Mrs. Kenealy, who was in her eighty-seventh year, was the only daughter of William Nicklin, of Russell Hall, near Dudley. Of her large family of eleven children, one son was the late Mr. Alexander Kenealy, for eleven years editor of the *Daily Mirror*, who died in June, 1915.

The Power to Amend a Petition of Right.

SEVERAL points of special interest to practitioners arose in the recent important case of *Ruffy Annell and Bauman Aviation Company* v. *The King* (reported elsewhere), which was tried before Mr. Justice MCCARDIE. The most important of these points concerned the power of the Court to amend a petition of right as if it were a statement of claim: on this no authority could be found, but notwithstanding the strong opposition of the Attorney-General, the learned judge held that, as the result of the Petition of Right Act, 1860, it was within his power and was his duty to amend in a proper case, *i.e.*, wherever in a suit between subject and subject such amendment would have been allowed. The view he took was that the Statute of 1860 intended to make the Crown liable to suit, within the limited sphere of responsibility and in proceedings which affects the Crown, at the instance of an aggrieved person; that the *fiat* of the Secretary of State, although a condition precedent to action brought, should be given as a matter of right, not of arbitrary discretion, in every proper case, because it is not for the Crown to say whether or not it ought to be sued, that being the duty of the court; and that, accordingly, once a petition is before the court, having received the *fiat*, it can be amended without the necessity of any new *fiat*. Such a view, certainly, is something of a revolution in Crown proceedings; but it is just as certainly a beneficent revolution.

It has long been settled law that no action will lie against the King personally; an action by petition of right lies against the King in his corporate, and not his personal, character; this has been law ever since the reign of Edward 1 (Chitty, Prerogative of the Crown, c. 13, p. 339). But the estate of the deceased monarch is liable by statute for payment of his debts under 39 & 40 George 3 (*ibid.* p. 242). CHITTY also points out that there are in theory of law no fewer than three ways of taking proceedings against the King, namely: (1) *Monstrans de droit*, (2) Traverse of Office, and (3) Petition of Right. The first and second are never now brought, but it would be hasty to say that they are obsolete. There is always the possibility of some litigant attempting to revive them, and in the absence of a statutory bar he might be entitled to proceed; but the practical and procedural difficulties in his way would be almost overwhelming. *Monstrans de droit* was a petition by the suppliant where (A) the facts upon which Crown and suppliant alike relied had already been established by commission, inquest of office, or in some other way, and where (B) both parties desired the judgment of the court upon the legal situation created by the facts. In other words, it corresponded to a Crown special case. An account of it will be found in Chitty (*supra*) and in Broom's Legal Maxims (p. 50). Traverse of Office was a very limited remedy arising at Common Law where goods and chattels had been seized by the Crown through an officer when the Crown could have taken proceedings by way of Information to seize the goods and chattels, but had improperly exercised instead the right of self-help (Chitty, Prerogative of the Crown, p. 356). Obviously such an action will only apply in a very few cases.

Petition of Right, on the other hand, is a very wide remedy, and lies, according to CHITTY and the other authorities, in four separate cases: (1) to recover land, goods, or money which have found their way into the possession of the Crown. and of which the suppliant demands restitution or in respect of which he demands compensation; it will not lie for damages, since such damages would sound in tort, and the Crown is not liable in proceedings for tort; (2) to recover a debt or liquidated sum due by the Crown; (3) to recover unliquidated damages for a breach of contract by the Crown; and (4) for moneys payable to the suppliant under a grant of the Crown, *e.g.*, a salary or annuity or pension. Even in these four cases, however, the suppliant is absolutely disentitled if he himself has committed some breach of his obligation, although such breach would not have disentitled

him against a subject, but merely have given the defendant a counter-claim: *Morgan* v. *Seaward* (2 M. & W. 544, per Parke, B.). And, of course, it is trite law that the King is not responsible for tortious acts: *Tobin* v. *The Queen* (33 L.J. C.P., p. 206). It is also trite law that the Crown cannot be made a trustee and treated as personally liable for breach of trust: *Baron de Bode's case* (8 Q.B., p. 208). There is a well-known statutory exception, that of the Public Trustee, for whose default the Treasury is by statute responsible.

The reason why the King cannot be rendered liable for a tort or a tortious breach of trust is clear. "The King can do no wrong" is an essential maxim of constitutional law; it follows that he cannot be guilty of a tort—under the old rule of pleading, the plea in the case of tort was "guilty" or "not guilty"—nor can he be made amenable to the penitential jurisdiction of Equity by an order to purge his conscience by making restitution for an unconstitutional act. In *Tobin* v. *The Queen* (*supra*), the court held that "the notion of making the Sovereign responsible for a supposed wrong tends to consequences which are clearly inconsistent with the duties of the Sovereign." Apart from statute, curiously enough, the rigorous application of this rule in unexpected directions prevents a petition of right from being available for the patentee for infringements: *Feather* v. *The Queen* (1865, 6 B. & S., p. 257). But by sect. 29 of the Patent and Designs Act of 1907, the Crown is made liable to suit in such cases, always reserving certain rights in favour of Government Departments to make use of certain inventions on terms to be settled by the Treasury. See now sect. 8 of the Act of 1919.

Of course, a subject of the King who commits a tortious act in his capacity of the King's officer or agent, is liable in the ordinary way. If he pleads the command of the King, the court will proceed to consider whether that command was lawful or unlawful; and if it was unlawful, it will be ignored, since the King cannot command others to commit wrong acts. Exceptions arise under a number of colonial statutes, which give the aggrieved party, who has suffered a tort at the hands of an officer of the Crown acting in the course of his duties, a remedy against the Crown itself (*e.g.*, *Attorney-General of Straits Settlements* v. *Wemyss* (13 App. Cas., 192), but these are statutory exceptions to the general rule of law. The leading cases as to an officer of the Crown's liability for torts to subjects are *Madrago* v. *Willes* (3 B. & Ald.) and *Walker* v. *Baird* (1892, A.C. 491). In the former case, a naval officer, obeying his instructions, destroyed a merchant vessel in circumstances which did not in law justify his act, and he was held liable in damages. In the latter case, a naval captain, acting under the provisions of a treaty between France and England, which made it the duty of the English Crown to prevent British subjects from erecting fishing stations on the French shore of Newfoundland, took steps to destroy a lobster factory which infringed the terms of the treaty. It was held that in this matter the treaty was *ultra vires*; only the legislature could give away the common law rights of British subjects; and therefore the defendant was liable in tort, although obeying a command contained in a treaty. In *Raleigh* v. *Goschen* (1898, 1 Ch. 73) where officials of the Admiralty trespassed on private land, it was held (1) that each such official could be sued notwithstanding the order; (2) that any superior, who as an official commanded the act, could be sued, including an individual member of the Board of Admiralty; but that (3) the Board or its First Lord, who is the Board in his corporate capacity, could not be sued on the ground of *Respondeat Superior*, since subordinate officers of the Crown are not the servants of the Head of the Department. The Head can be sued as an individual, if he actually instigated the tort, but not as the principal of the tort-feasor, merely because he is the latter's superior.

Such are the accepted general principles which govern the liability of the Crown by Petition of Right. In *Ruffy Annell and Bauman Aviation Company Limited* v. *The King* (*supra*), the special facts were rather interesting. The War Office had entered into a contract with the suppliants by which the latter were to provide aviation instruments "under direct military supervision" for the purposes of the War Office and "as a temporary measure . . . for the duration of the war." After the Armistice, the War Office, considering the scheme no longer necessary, closed it at an early date without due notice to the proprietors. Now, sect. 1 (1) of the Termination of the Present War (Definition) Act, 1918, fixes a date to be declared by Order in Council as the termination of the War, which is to be read into any "contract, deed or other instrument referring, expressly or impliedly, and in whatever form of speech, to the present war or to the present hostilities" as the termination of the war "unless the context otherwise requires." Notwithstanding this, the learned judge held that a contract obviously relating to a matter which ceases to be useful when hostilities terminate, cannot be supposed to be governed by this provision, and must be held to be terminable on reasonable notice immediately after the Armistice. The Crown had contended that no notice was necessary, but this view the learned judge rejected. In order to decide as he did, he found it necessary to amend the petition of right so as to support the alternative claim, which he allowed, and it was in the course of so doing that he decided that a court can amend a petition of right notwithstanding the dissent of the Crown. As a matter of interest to practitioners it may be added that the learned judge awarded to the suppliants against the Crown one-half of their taxed costs.

Rights of Entry for Breach of Covenant.

PRIOR to the Real Property Act, 1845, a possibility was not assignable *inter vivos*, and for this purpose a possibility included a contingent remainder and executory interest, and also a right of entry: *Lampet's Case* (1612, 10 Co. Rep., 46*b*, 48*a*); *Fulwood's Case* (1591, 4 Co. Rep., 64*b*, 66*b*); Challis's Real Property, 3rd ed., p. 76; but s. 6 of that statute provided that a contingent, an executory and a future interest, and a possibility coupled with an interest, in any hereditaments, "and also a right of entry, whether immediate or future, and whether vested or contingent," into or upon any hereditaments might be disposed of by deed.

The enactment seems sufficiently express in its terms to include all rights of entry however arising; but soon after the passing of the statute a distinction was taken between a right of entry for condition broken and a right of entry after disseisin. "We think," said POLLOCK, C.B., in *Hunt* v. *Bishop* (1853, 8 Ex., 675, 680), "that the 8 & 9 Vict. does not relate to a right to re-possess or re-enter for a condition broken, but only to an original right where there has been a disseisin, or where the party has a right to recover lands, and his right of entry and nothing but that remains." The same question, arising on the same lease (though there is a discrepancy in the date), went before the Exchequer Chamber in *Hunt* v. *Remnant* (1854, 9 Ex., 635), and in the course of the argument, MAULE J., said, referring to the statute: "That does not mean a right of entry for a forfeiture, but a right of entry in the nature of an estate or interest, that is, where a person by lapse of time has lost everything except his right of entry." In fact both these cases were decided on other grounds, and they were hardly formal decisions on the present point, but they have been treated as in fact deciding it: see Williams on Seisin, p. 125.

It will be noticed that MAULE, J., referred to the loss of everything by lapse of time except the right of re-entry. This, apparently, was a slip. It was the right of re-entry that might be lost by lapse of time, and, prior to the Statute of Limitations commencing to run, the estate must have already been turned to a right of re-entry by disseisin or otherwise. What the learned judge meant, no doubt, was that the statute referred to a case where a person entitled to possession had either been dispossessed or had never been in possession. At that date—in 1854—the

resulting right of re-entry could only be lost by the lapse of time; but originally, in BRACTON'S day, it was a right of fresh re-entry—a right to be exercised within four days, or other short period varying according to circumstances; and though, subsequently, it was a right ascribed generally to an owner out of possession, it was denied to him when there had been a "discontinuance" (Litt., ss. 592-595)—*e.g.*, a feoffment with livery of seisin by a tenant in tail—and it was "tolled" by a descent cast. This doctrine was abolished by s. 39 of the R.P.L.A., 1833, and thereafter an owner out of possession retained his right of entry until extinguished by the statute, though its exercise was subject to the restrictions of the Statutes of Forcible Entry.

In *Jenkins* v. *Jones* (9 Q.B.D. 128, C.A.), JESSEL, M.R., explained the limitation imposed by *Hunt* v. *Bishop* and *Hunt* v. *Remnant* on the words of s. 6 of the R.P. Act, 1845, as follows: "The reason why a right of entry for condition broken was not assignable by virtue of 8 & 9 Vict., c. 106, s. 6, may be taken to be, that it was at the option of the person entitled to enter whether he would take advantage of the breach of the condition." The explanation does not seem to be helpful. If a right of entry is given on breach of a condition or covenant, it arises immediately on the breach, and there does not, in fact, seem to be any sound reason for the distinction taken in the cases in question; no such reason, for instance, as in *Grant* v. *Ellis* (1841, 9 M. & W. 113), settled that "rent" in s. 1 of the R.P.L.A., 1833, did not include a rent reserved on a lease. In fact the right of entry in question in *Jenkins* v. *Jones* was the ordinary right of entry of an owner out of possession, and the point there was that a grant of such a right was not invalid under the Pretenced Titles Act, 32 Hen. 8, c. 9, s. 2 (now repealed by the Land Transfer Act, 1897, s. 11). By s. 10 of the Conveyancing Act, 1881, which relates to leases, "every condition of re-entry and other condition therein contained" is annexed and incident to and goes with the reversion expectant on the term; but for the present purpose this does not seem to differ materially from the like provision of 32 Hen. 8, c. 34, s. 1, and it seems to have been assumed in *Cohen* v. *Tannar* (1900, 2 Q.B. 609) that it did not enable an assignee of the reversion to take advantage of a right of re-entry for breach of covenant prior to the assignment. This omission in the Act of 1881 was cured by the Conveyancing Act, 1911, which by s. 2 extended s. 10 of the Act of 1881 to conditions of re-entry for breach of covenant, although the assignee of the reversion becomes entitled after breach. This may be regarded as a legislative recognition that the distinction set up in *Hunt* v. *Bishop* and *Hunt* v. *Remnant* (*supra*) was unsound.

But apart from the possibility of a right of re-entry for breach of covenant being assigned, there are two other points to be considered; first, whether by the conveyance of the reversion this right is in fact assigned; and secondly, whether the forfeiture has been waived; and these were considered in the two cases just cited. In *Hunt* v. *Bishop* the real ground of decision was that there had been in fact no breach of covenant. The covenant was to complete buildings to the satisfaction of the lessor's surveyor, and no surveyor had been appointed. But assuming that there was a breach, it was considered that it was waived, since the assignment was made subject to the lease, or, rather underlease. POLLOCK, C.B., observed: "It was said that the assignment was no waiver of the forfeiture, because the assignor did not know of it. We very much doubt whether, on that ground, it would be competent to the assignee to take advantage of the forfeiture," but the point was not decided. The real ground of decision was that there had been no breach of covenant; and if there had, then the right of entry was not assignable. In *Hunt* v. *Remnant* it does not seem that the question of waiver was considered, unless this is implied in the question which was considered, namely, assuming that the right of re-entry could be assigned, were there any words showing an intention to assign it? The material passage from the judgment is:—

> "The assignment contains no words in express terms passing it, but only the general words 'all the estate, right, title and interest,' etc., and in construing the conveyance we think the parties had no intention, and that there are no sufficient words to pass that interest. There are only two suppositions: one, that the parties had knowledge of the forfeiture, the other that they were ignorant of it. If it was known to them, there are no words showing that knowledge, but on the contrary, they recognise the agreements and underleases, and convey subject to them. On the other hand, if they did not know of the forfeiture, there is less reason to suppose that they intended to pass the right of entry."

This was the real ground of the judgment—that it was not intended to pass the right of entry. The reference to the assignment being made subject to the underlease may mean that the breach had been waived; but the more natural interpretation is that the court was not thinking of waiver, but only whether there was an intention to pass the right of entry. It may be said, indeed, that the real meaning is: if the parties knew of the breach, they waived it, and there was nothing to pass; if they did not know, then there was no intention to pass the right of entry. But, in fact, the question of waiver was not definitely considered. Assuming there was a right of re-entry, the assignment had no words suitable to pass it.

As we have seen, *Hunt* v. *Bishop* and *Hunt* v. *Remnant* (*supra*) have been over-ruled so far as they decided that a right of re-entry for breach of covenant was not assignable by s. 2 of the Conveyancing Act, 1911, and that section, taken with s. 10 of the Act of 1881, also renders *Hunt* v. *Bishop* of no effect as regards fit words of assignment. These are not now required. The benefit of the condition of re-entry runs automatically with the reversion. Hence, so far as anything actually decided is concerned, both these cases seem now to be out of the way. But in the recent case of *Davenport* v. *Smith* (1921, 2 Ch. 270), ASTBURY, J., recurred to *Hunt* v. *Remnant* and cited the passage we have quoted above for a purpose which seems to deprive the Act of 1911 of most of its effect. The second subsection of s. 2 has an express saving for waiver. The section is not to render enforceable any condition of re-entry or other condition waived or released before the assignment of the reversion. In *Davenport* v. *Smith* the reversion was assigned subject to and with the benefit of a lease. Previously to the assignment there had been a breach of covenant, and of this both assignor and assignee were aware. The learned judge, relying on the above passage from *Hunt* v. *Remnant*, and upon the exposition of the doctrine of waiver, given by PARKER, J., in *Matthews* v. *Smallwood* (1910, 1 Ch. p. 786), held that the conveyance of the property subject to the lease was a recognition of its existence, and since the parties were aware of the breach, this recognition was a waiver of the forfeiture. Whether this is correct or not, it can, as we have above shown, derive no support from *Hunt* v. *Remnant*. That case, so far as concerns the present point, did not depend on waiver, but on the aptness of the conveyance to pass a right of re-entry. Nor does the alleged waiver appear to come within the saving of s. 2 (2) of the Act of 1911. There the waiver must be complete before the title of the assignee arises; that is, it must be complete before the execution of the assignment. It cannot be the result of the assignment itself. Apart from this, it would seem that a waiver must be the result of an act as between landlord and tenant, such as acceptance of rent or distraining, with knowledge of the breach. We do not notice that there has been any appeal from the decision, and, indeed, the action failed also on another ground, so that an appeal may have been impracticable. But it will be interesting to watch the result should the principle of the decision be reviewed, as we hope it may be, on another occasion.

Dr. Ellis T. Powell, of Brondesbury Park, N.W., appeared before the Willesden Justices last Saturday, to answer a summons for the non-payment of rates. He submitted that the poor law of Elizabeth, under which poor rates were levied, was no longer effective. If there was a breach in the Constitution, all prior enactments fell to the ground. When James II. fled from the country for about six weeks there was no Parliament, and during the six weeks all enactments fell to the ground. Therefore, the Elizabethan poor law had been dead for 230 years. The Chairman ruled that the Act of Elizabeth was still in force and an order was made for the payment of the rate. On the application of the defendant it was agreed to state a case with a view to appeal, and that distress would not be levied pending such an appeal.

Delegated Legislation in Theory and Practice.

The Twentieth Century differs from its three predecessors in the History of English Legal Institutions in one very remarkable way. In 1722 or 1822, if a subject had desired to know where he could find the rules of law which he was supposed to know and which he must obey, it would have been a sufficient reply to point him to the Statutes of the Realm and the accumulation of reported decisions. It is true, that corporations had at common law some limited power to make bye-laws, enforceable by a monetary penalty levied on default by distress of the malefactor's goods and chattels, for what was vaguely known as the "Good Government of the town, and the suppression of nuisances." But few, if any, municipal corporations made any real exercise of this power. Charters, too, sometimes conferred on specially privileged corporations some limited additional powers, and private Acts of Parliament sometimes helped in a similar way the activity of turnpike trustees and other undertakers of public works. But in practice these bye-laws were of little account and no real importance. And the great Departments of State, save in times of war, never attempted to exercise any legislative jurisdiction of this kind.

Now all is changed. In 1922 the citizen who made the same enquiry, even if he intended expressly to omit all reference to Emergency Legislation, could not satisfactorily be referred to the Statutes and the decisions. He would have to be told that, in addition, there exist vast books of Statutory Rules and Orders made by the King in Council, of Departmental Regulations made by the various Government Departments, of Bye-laws galore made by all sorts of local authorities, statutory companies, and even occasionally by mere Police officials. Indeed, in most matters that intimately concerned him, he would find that the great mass of the effective legislation is to be found in the Rules and Orders, not in the Statutes. For instance, were he a parent, the law relating to the education of his children is contained, to a very small extent, in a few common law decisions, to a slightly larger extent, in a Consolidated Education Act, but to a far greater extent, in the Education Code, an elaborate series of binding Rules and Regulations issued by the Board of Education. What is true of Education is equally true of the Poor Law, and almost equally true of Public Health, Highways, the Police, Licensing of every kind, Rating, Registration, and nearly all the matters which together, make up what is known as Local Government Law. Indeed, in the latter cases, the law of Codes and Regulations is supplemented by an additional vast body of detailed law, varying for each locality, known as the local bye-laws. These bye-laws, however, are not so numerous or so various as one might expect. This is chiefly due to the fact that the Home Office and the Ministry of Health, whose confirmation is very often a condition precedent to the validity of a local authority's enactments, generally put some gentle pressure on local authorities to adopt a body of "Model Bye-laws," carefully prepared by or under the instructions of the Ministry's legal expert advisers, and intended to provide for all normal contingencies. Since the line of least resistance is found by adopting these "Model Bye-laws," the less important corporations usually do so, and in this way some measure of uniformity is attained. But the "Model Bye-laws" naturally differ for rural and urban areas; and large towns not only scorn to accept them, but frequently press for additional Bye-law-making powers to be conferred on themselves by special Act of Parliament.

Now the delegated legislation, thus found to affect by far the greatest number of events in the life of the ordinary citizen, may be regarded from several points of view. With regard to the authorities possessing it, some such classification as the following seems to fit the facts:—

(1) The King in his Privy Council (Statutory Rules and Orders under the more important Statutes).

(2) The Rule-making Committees of the Supreme Court of Judicature, County Courts, &c. (Orders and Rules relating to court procedure).

(3) The various Departments of State (Regulations on a vast number of detailed matters, chiefly relating to Local Government and the Social Economy of the Realm);

(4) Local Authorities of every degree (Bye-Laws operating only within the jurisdiction of each);

(5) Statutory Undertakers, such as Railways, Water Companies, and the owners of public utility enterprises (Bye-laws effective only within the sphere of their operations, both physical and juristic);

(6) Universities and some other privileged corporations (Statutes relating to the enjoyment of academic privileges);

(7) The Councils of the leading professions (Regulations governing admission to the profession, and the disciplinary control of its members).

But there is another way of regarding this mass of delegated legislation. Some of it consists of real legislative power which only Parliament could have exercised. Much of it consists of matters relating to the "Defence of the Realm" and its "Social Economy," which—apart from statutes—were within the special powers enjoyed by the Royal Prerogative. Some, again, consists of powers previously exercised as a matter of right by judges and magistrates, who possess inherent jurisdiction to regulate the procedure of their own courts. As a matter of fact, when a Statutory Rule or Order or a Regulation is issued, it is usual for the enacting clause to state that the delegated legislation is exercised by virtue of special statutory powers, which are recited, and also by virtue of any other powers in that behalf enabling the authority to make its proposed laws. This preserves any common law powers possessed under the Prerogative of the Crown, provided that the law-making body is the King in Council. But when the law is made by a Department of State, it seems very doubtful how far that Department can purport (apart from custom and prescription) to make use of the King's Prerogative. A minister is the King's adviser, but is not necessarily authorised to exercise the legislative Prerogative of the Crown even within the sphere reserved for his own Department of State.

As a matter of fact, nearly one-half of modern delegated legislation is computed by such authorities as Sir Courtenay Ilbert and Mr. Cecil Carr, to consist in reality of the exercise by subordinate bodies, under the authority of Parliament, of powers residing in the Prerogative. In substance, it amounts to the transfer of this domain from the Prerogative to the Legislative Power, since the Crown seldom or never ventures to exercise prerogative rights adversely to, or even in addition to, such powers conferred on a Department by an Act of Parliament. But if it purports to do so, the courts lean strongly against any attempt to drag in the Prerogative. Therefore the existence by so much "delegated legislation" is really a victory for Parliament over the Prerogative. But, at the same time, it is a victory for the Bureaucracy over both King and Parliament. The servant has become to all intents and purposes master. What the Ministers of despotic sovereigns dared not do by virtue of undoubted prerogative, because public opinion would not have brooked interference so great in the private affairs of life, the bureaucrat can now do without a moment's anxiety under the ægis of parliamentary authority

In a recent case, Lord Justice Scrutton said that a war cannot be conducted under the restrictions imposed by *Magna Carta*: *Rounfeldt* v. *Phillips* (1918, 35 Times L.R. at p. 47). This is doubtless true. But possibly it is also true that the complicated machinery of our "Great Society" of to-day, with its large businesses and inter-woven system of commerce, liable to be dislocated by strikes or boycotts, cannot be conducted altogether in accordance with the liberty of the subject which *Magna Carta* was intended to confer. The penalty of our complex industrial civilization is that all are inter-dependent, and the liberty of each is a menace to all. Hence grave restrictions on liberty must be endured unless we can return to some simpler scheme of social economy.

Res Judicatæ.

The Elasticity of Declaratory Orders.

(*Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade, Ltd.*, 1921, 2 A.C. 438).

The whole question of the principle on which "Declaratory Orders" can be made in the High Court and other Courts is at present in a somewhat unsettled state, as the result of recent decisions and *dicta*. But, curiously enough, in *Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade, Ltd.* (*supra*), the House of Lords gave to these orders a privilege not conceded to other forms of relief. A claim had arisen out of a mortgage security, and the mortgagor brought an action for a declaration against the mortgagee, without offering to redeem. Now it is a well-settled rule of Equity practice that a mortgagor will not be heard unless he offers to redeem; his claim to be heard is based on the existence of an equity of redemption, but unless he proposes to exercise that equity, he cannot be allowed to claim other relief against the owners of the legal estate: *Bank of New South Wales* v. *O'Connor* (1889, 14 App. Cas., 273). The reason is that the dismissal of a bill to redeem otherwise than for want of prosecution operates as a foreclosure; but it would not so operate if no claim to redeem had been put forward, for the right to redeem would not have been the subject of an adverse judgment: *Inman* v. *Wearing* (1850, 3 De.G.&Sm., p. 729, per Knight Bruce, V.C.). It is sufficient if the offer to redeem is made, not on the pleadings, but during the trial, because it can be incorporated in the judgment: *Jervis* v. *Berridge* (1873, L.R. 8 Ch. 351).

Now, the House of Lords did not attempt to overrule this well-settled rule, but they considered that it did not necessarily apply to a mere claim for a declaratory order, which can be made even if there is no actual claim for other relief before the court. Lord Wrenbury strongly dissented to this extension of the scope of Declaratory Orders, but the remaining four judges overruled his opinion.

Frustration of Adventure.

(*Re Badische Co., Bayer Co., etc.*, 1921, 2 Ch. 331.)

It is not very often that a case arises in the Chancery Division in which it becomes necessary to hold a contract dissolved on the ground of "frustrated adventure." In the above case a company was registered in England, but at the outbreak of the war most of its shares were held by a German company. The two companies had a mutual agreement restricting competion in each other's sphere of operations; but a clause in the agreement expressly suspended performance of contracts in the event of war. In the events that occurred, there were uncompleted trading contracts between them when war broke out. The question, therefore, arose whether these contracts terminated by subsequent impossibility, on the outbreak of war, in accordance with the general doctrine of "frustrated adventure," or were merely suspended because of the express clause providing for that contingency. Now the latter view would seem *primâ facie* to be right, in view of the express clause, and also in view of the additional fact that the contracts were for the sale of "unascertained and future goods"; *Blackburn Bobbin Co.* v. *T. W. Allen and Sons* (1918, 1 K.B. 540). But Mr. Justice Russell held on the interpretation of the particular agreement that it did not refer to war between England and Germany, the domiciles of the two contracting parties, but to war between either and a third country; the parties could not be supposed to have intended to substitute a private bargain for the general law in the event of their respective countries entering into war. This seems far from conclusive. But the learned judge took the further view that, if the parties had contemplated war between England and Germany, the clause suspending contracts would have been illegal as being opposed to public policy, so that in any event he refused to give legal effect to its terms. Lastly, since the English company was, in substance, in the control of German hands, the learned judge took the further view that contracts entered into by it prior to the war became illegal on the outbreak of war in accordance with the principle of *Daimler Co.* v. *Continental Tyre and Rubber Co.* (1916, 2 A.C. 307).

Reviews.

Conveyancing.

A Concise Introduction to Conveyancing. By J. A. Strahan, LL.D., with Chapters by J. Sinclair Baxter, LL.D., and Arthur Underhill, LL.D., Barristers-at-Law. 2nd Edition. Butterworth & Co. 15s. net.

This second edition of Mr. Strahan's extremely lucid outlines of Conveyancing has been delayed eight years owing to the intervention of the war, which practically denuded the Inns of Court of bar-students, the class to whom this book has always appealed most. The great merit of the work is that it is so methodical and so clear; nor are those qualities gained—as they sometimes are in text-books—at the expense of accuracy. A curious feature of the work is a chapter on Irish Conveyancing, no doubt due to the fact that Mr. Strahan's books are much in request at College Green as well as over here. Mr. Underhill writes on the "Simplification of Real Property Law," on which his views are already familiar to most readers of the Solicitors' Journal. There is no reference to the Rent Restriction Acts, 1920, which evidently means that Dr. Strahan does not expect that statute to be renewed when it expires eighteen months hence. But many experienced practitioners rather fear that, once introduced, the principle will never be allowed to disappear from our statute-book. *Vestigia nulla retrorsum.* Be that as it may, this work is to be heartily commended.

Constitutional Law.

Outlines of Constitutional Law. By Dalzell Chalmers, B.A. (Law Tripos, Cambridge), and Cyril Asquith (late Fellow of Magdalen College, Oxford), Barristers-at-Law. 2nd Edition. Sweet & Maxwell, Ltd. 12s. 6d. net.

This book contains a concise account of the present state of the law of the Constitution and its History. It is divided into five parts, which deal respectively with Parliamentary Sovereignty, the Rights and Liberties and Duties of the Subject, the Crown in Council or Executive Government, the Judiciary, and the Legislature. There are seven useful Appendices noting, (A) the Constitutions of the United States, Canada, South Africa, and Australia (but not that of the "Irish Free State"), (B) the Treaty-making powers of the Crown, (C) Cession of Territory, (D) Emergency Legislation, (E) Ancient Writs, (F) the Criminal and Civil Jury, and (G) the Constitutional Status of India. On the whole, this work of some 300 pages, while containing nothing original, is well suited to serve as a *vade mecum* to the law student essaying an examination in its subject-matter.

Books of the Week.

Notable British Trials.—Trial of Steinie Morrison. Edited by The Hon. H. Fletcher Moulton, B.A. (Cantab), Barrister-at-Law. William Hodge & Company Ltd. 10s. 6d. net.

American Bar Association.—Report of the 44th Annual Meeting of the American Bar Association, held at Cincinnati, 31st August, 1st and 2nd September, 1921. Baltimore. The Lord Baltimore Press.

Conveyancing.—Forms of Requisition on Title, Freeholds, Leaseholds, and Short Form for Freeholds or Leaseholds. Solicitors' Law Stationery Society Ltd.

Conveyancing.—The Conveyancer. Vols. I-VI, with Supplements of Precedents, "Abstracts" to "Landlord and Tenant," and Miscellaneous. Sweet & Maxwell Ltd. Vol. I, £1; Vols. II-VI, £2 each. The six volumes together, in buckram, for cash, £10 15s.

Correspondence.

The Law Society and Qualified Managing Clerks.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I understand that the Law Society is anxious to increase its membership. At present their interest seems to be limited to Articled Clerks and Solicitors practising on their own account. There would not, I think, be much difficulty in increasing the number of members considerably if the Society would show a little interest in admitted managing clerks, whose existence the Society at present ignores. After admission, most solicitors take posts as managing clerks for a time, and they form a fairly large section of the profession.

Young solicitors coming back from the war, found that those who had remained at home had entrenched themselves firmly against the returning soldiers, who have had for the most part to obtain managing clerkships, generally without prospects.

I know of at least one exception, where the former managing clerk was taken into partnership soon after he came back, and I do not doubt that there have been other cases, but they have been, I believe, rare.

Another thing the Society might do would be to establish a branch comprising a luncheon-room and a reading-room, in the City.

The Society's Hall provides a pleasant and inexpensive club for members practising near the Law Courts, but is not of much use to solicitors in the City, of whom there are a good many. It is true there are clubs in the City, but the subscription to them does not fall far short of that of a West End club, and is rather excessive for the average solicitor, who seldom wants to use a club in the City except at lunch time.

G. U. O.

CASES OF THE WEEK.

Court of Appeal No. 1.

VILLIERS and ANOTHER *v.* ATTORNEY-GENERAL.

23rd and 24th January.

Charity—Charity Commissioners—Jurisdiction—Mixed Charity—Exemption from Jurisdiction—Power to convey Land without restriction—Endowments—Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 62, 66—Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), ss. 29, 48.

Land within the compulsory registration area was conveyed to the trustees of a deed which established a trust for charitable purposes. At the date of the conveyance there were no subscriptions to the charity, and the only apparent income arose from the endowments contemplated by the deed, but subsequently and before application to the Land Registry for registration, voluntary contributions were received for the purpose of the charity.

Held, reversing the decision of Peterson, J., that registration could only take place with the consent of the Charity Commissioners, and subject to a restriction upon future dealings with the property without the like consent; for although s. 62 of the Charitable Trusts Act, 1853, exempted charities maintained partly by subscriptions and partly by income from endowments (known as "mixed charities") from the jurisdiction of the Commissioners,

yet the time to determine the nature of the charity was the time when the conveyance was made to it, and the charity in this case did not become a mixed charity until after that date.

Appeal by the Attorney-General from a decision of Peterson, J. The respondents, The Hon. Arthur G. C. Villiers and G. V. Wellesley, were the trustees of a deed which established a general charitable trust. The deed recited that Mr. Villiers and others might, from time to time, make voluntary subscriptions or donations of lands, stocks, moneys, or securities for the benefit of the general charitable purposes declared by the deed. The capital and income were declared to be applicable to such charitable purposes as the trustees might think fit. In March, 1921, Mr. Villiers made two gifts of land to the charity, one being of land at Shoreditch, within the area of compulsory registration under the Land Transfer Acts, 1875, 1897. After the date of the conveyance of the latter, a number of substantial subscriptions were received by the respondents as subscriptions or donations to the work of the charity. The respondents applied for registration of the land at Shoreditch, but the Acting Chief Registrar informed them that, by s. 29 of the Charitable Trusts Amendment Act, 1855, registration could only be granted with the consent of the Charity Commissioners, and that, even if that consent were obtained, a restriction would be entered on the register against any further dealing with the property without the like consent. The respondents appealed against that decision, contending that the registration was exempt from the control of the Commissioners, under s. 62 of the Charitable Trusts Act, 1853, which, after describing charities maintained partly out of subscriptions and partly out of endowments (now described as "mixed charities"), and giving partial exemption in the case of those charities, provided that . . . "no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said Board, or the powers or provisions of this Act . . ." They contended that they represented a mixed charity within the section, and that the land in question, not being the subject of any special application or appropriation, was outside the jurisdiction of the Charity Commissioners. Peterson, J., held that the time when the court considered the application was the time at which the nature and status of the charity were to be considered, and at that time the respondents were certainly in receipt of subscriptions, and a mixed charity "as last aforesaid." They were therefore exempt from the jurisdiction, and registration must be ordered without restriction. The Attorney-General, on behalf of the Charity Commissioners, appealed, citing *inter alia*: *In re Clergy Orphan Corporation* (43 W.R. 150; 1894, 3 Ch. 145); *In re Richard Murray Hospital* (58 Sol. J. 670; 1914, 2 Ch. 713). The Court allowed the appeal.

Lord Sterndale, M.R., said that the charity was clearly an endowed charity, and so came *primâ facie* within the jurisdiction of the Commissioners, and the only question was, whether there was anything in s. 62 of the Act of 1853 to take it out of that jurisdiction. There was here an endowed charity which had now become a mixed charity, and the real question was as to the time at which the charity was to be considered a mixed charity or not. According to the ordinary meaning of the words of the section, he (his lordship) could see no reasonable construction except that it must mean at the time at which the donation of land to be registered was made. It was at that time that the charity must possess the character of a charity "as last aforesaid," *i.e.*, a mixed charity. The judge below had considered the material time as being "the time when the question was being considered by the court, or when the question arose for consideration." He (Lord Sterndale) could not agree. If the land conveyed were in a compulsory area it would, of course, come before the court at an early stage, but if not in such an area the question might not be considered for, perhaps, twenty years, during which long interval the charity might change its nature several times. Many authorities had been cited, but it was unnecessary to go into them, for none of them dealt with the real point at all; it was quite a new point. The charity here was not a mixed charity at the time when the donation was made, and the decision of the Acting Chief Registrar was therefore right, and must be restored.

Warrington and Younger, L.JJ. delivered judgments to the same effect.—Counsel: *Tomlin*, K.C., and *Dighton Pollock*; *C. A. Bennett*. Solicitors: *Treasury Solicitor*; *Slaughter & May*.

[Reported by G. T. Whitfield-Hayes, Barrister-at-Law.]

FOWLER *v.* KIBBLE. 19th and 23rd January.

Trade Union—Trade Dispute—Interference with Labour—Deprivation of use of Tools—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7—Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 3.

Where in the course of a trade dispute miners were prevented from descending a pit and working, by the intervention of a checkweighman, a trade union official, who instructed the employer's lampman not to issue to the men the safety lamps, without which they could not work.

Held, that there was no wrongful deprivation of tools or hindering from work within the meaning of s. 7 of the Conspiracy and Protection of Property Act, 1875, that that statute made nothing actionable that was not previously actionable, and that being so the acts complained of only amounted to such an interference with employment as came within s. 3 of the Trade Disputes Act, 1906, and therefore was not actionable.

Appeal by the plaintiffs from a decision of Sargant, J. (reported 38 T.L.R. 58). The action arose out of a dispute between certain miners at the Cannock & Leacroft Colliery Company and the local trade union officials of the Cannock Chase Miners' Association, a recognised branch of the Miners Federation. The plaintiffs were men who had seceded from the Cannock Chase Association and formed the Wednesfield and District Miners' Association which was not recognised by the Federation. The defendant, Kibble, was a checkweighman, appointed under the Coal Mines Regulation Acts, and treasurer of the Cannock Chase Miners' Association, and the other defendant, Sambrook, was a delegate of that association. The plaintiffs claimed an injunction to restrain the defendants from procuring or attempting to procure a breach of contract between the plaintiffs and their employers and/or from interfering with the rights of the plaintiffs to dispose of their labours as they would. The nature of the interference complained of was that on 5th June, 1920, and on subsequent dates the defendant, Kibble, informed the plaintiffs or some of them that they would not be able to get work unless they joined the Cannock Chase Miners' Association, as the other men would not work with them; and on 16th, 22nd and 23rd June, when the plaintiffs were waiting in a queue for their safety lamps, without which they were not allowed to descend the pit and work, the defendant, Kibble, instructed the lampman not to let them have their lamps, which instructions the lampman obeyed. The lamps belonged to the colliery company and were numbered so that the same lamp was always issued to each man in return for his check. The plaintiffs were unable to go down the mine, and applied to Mr. Biddle, the assistant manager of the colliery, who replied that he could not have the mine held up for the sake of half a dozen men and could not interfere. The defendants pleaded the Trade Disputes Act, 1906, as a defence. The plaintiffs admitted that there was a trade dispute, but pleaded that the case was taken out of that Act by the fact that there had been an actionable breach, resulting in damages to them, of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict., c. 86), s. 7, of which is as follows: Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority . . . 3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof . . . Shall, on conviction thereof by a Court of summary jurisdiction, or an indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour. Sargant, J., held that what the defendants had done was not a breach of this Act, and that the defence failed, and dismissed the action with costs. The plaintiffs appealed.

The Court dismissed the appeal.

Lord Sterndale, M.R., said that the plaintiffs appealed from the decision of Sargant, J, who had decided against them on all the three grounds put forward. The first was that on the facts of the case no action would lie, because the case came within s. 3 of the Trade Disputes Act, 1906. The plaintiffs contended, secondly, that they were entitled to maintain an action by reason of a breach by the defendants of the Coal Mines Regulation Act, 1887, and, thirdly, that the defendants were liable on the ground of the breach of obligations created by s. 7 of the Conspiracy and Protection of Property Act, 1875. The plaintiffs had failed on all three grounds, and on the first two there was no appeal. On the third ground the court had listened to a long and interesting argument, but in the end it all came back in substance to the first point decided against the plaintiffs, on which there was no appeal. His lordship then stated the facts, and said that it was clear that the defendants were persons of considerable importance in the Cannock Chase Association. An agreement had been made between the mineowners and the Miners' Federation that only union labour should be employed in the mines, and for that purpose members of the Wednesfield Association, having seceded from the original union under the influence of a man named Cartwright, were regarded as non-unionists. The learned Judge was warranted in finding that if the plaintiffs were allowed to continue working there would probably be a stoppage of work in the pits, and that the defendants were not only anxious to avoid such a stoppage, but were anxious to persuade the plaintiffs to join the only recognized union. It was proved and admitted that the defendants had used no violence or threats. The contract, the breach of which was said to be induced, was the contract by the plaintiffs to work in the pit, for the determination of which they had to give 14 days' notice, but at a later stage of the argument it was alleged that there had also been a breach by the mineowners of the contract to provide each of the miners with a safety lamp to enable him to work in the pit. The plaintiffs contended that they were entitled to succeed by reason of there having been an actionable breach of the Act of 1875. His lordship, having read s. 7 of that Act, said that the learned judge below thought that that section contemplated something in the nature of violence. He (his lordship) agreed with his decision on that point, though not altogether with the reasons that he gave for it. He did not intend to cast any doubt on the cases, such as *Groves* v. *Lord Wimborne* ([1898], 2 Q.B., 402), which held that a breach of statutory duties might give rise to an action for damages at the instance of a person injured by that breach. But in the case of *Ward, Lock and Co.* v. *Operative Printers' Assistants' Society* (22 T.L.R., 327), it was held that s. 7 of the Conspiracy and Law of Property Protection Act, 1875, made nothing actionable which was not actionable before that statute was passed. Fletcher Moulton, L.J., there said: I cannot see that this section affects or is intended to affect civil rights and remedies. It legalizes nothing, and it renders nothing wrongful that was not so before. Its object is solely to visit certain selected classes of acts which were

previously wrongful—*i.e.*, were at least civil torts—with penal consequences capable of being summarily inflicted." The decisiont here was important, but it was on a different sub-section of s. 7—that dealing with watching and besetting. It was held there that there had been such watching and besetting, but that it was of a peaceable character, without any violence, and that it was not actionable, as no new right of action was given by the section. That concluded the appeal, which was argued entirely on the action of the defendants in telling or advising the lampman not to give out lamps to the plaintiffs. The contention was that the mineowners were under a contract to give each man a particular lamp, with a number corresponding to the number on his check, so that, it was said, each miner had a special property in his lamp, though generally the lamps were the property of the mineowners. The question whether the mineowners were bound to supply the miners with these safety lamps was pending before the courts, and, therefore, he would not refer further to it. In his (his lordship's) opinion, there had not been a wrongful deprivation of tools or hindering from work within the section. If the acts complained of were done to induce a breach of contract between the employers and the miners, or to prevent the plaintiffs from disposing of their labour as they willed, they might be actionable at common law, but such an action would be excluded by s. 3 of the Trade Disputes Act, 1906. The appeal therefore failed, and must be dismissed, with costs.

WARRINGTON, L.J., and YOUNGER, L.J., delivered judgments to the same effect.—COUNSEL: *Disturnal*, K.C., and *R. A. Willes*; *Grant*, K.C., and *W. M. Hunt*. SOLICITORS: *Ward, Bowie & Co.*, for *H. J. Nicklin*, Walsall; *Sharpe, Pritchard & Co.*, for *R. A. Willcock, Taylor & Co.*, Wolverhampton.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

Re CHAPMAN: HALES *v.* ATTORNEY-GENERAL.

Eve, J. 18th January.

WILL—CONSTRUCTION—RESIDUARY GIFT—FOR CHARITABLE PURPOSES—SUCH OBJECTS AS EXECUTOR MAY SELECT—"AT HIS OWN DISPOSAL"—TRUST FOR NEXT-OF-KIN.

A testatrix by a codicil made the following disposition: "the residue of my property I desire applied for charitable purposes as I may in writing direct or to be retained by my executor for such objects as he may in his discretion select and to be at his own disposal." The testatrix left no directions as to the charities she wished to benefit.

Held, that there was no good charitable trust and that the executor took the residue as trustee for the next of-kin of the testatrix.

Re Howell (1915 1 *Ch.* 241) *distinguished.*

By her will made in 1911, a testatrix appointed her solicitor executor, to whom she gave £100 if he proved the will and acted in the administration of her estate, and as to the residue of her estate she gave and devised the same "to....." By a codicil dated 17th January, 1920, she made the following disposition: "Subject to the payment of the legacies given by my will and all duties the residue of my property I desire applied for charitable purposes as I may in writing direct or to be retained by my executor for such objects and such purposes as he may in his discretion select and to be at his own disposal." The testatrix died in November, 1920, without leaving any directions as to the charities she wished to benefit. This summons was taken out by the executor to have it determined whether the residue was applicable for such charitable purposes as the executor might select, or whether it was to be held in trust for the next-of-kin or belonged to the executor beneficially.

EVE, J. Two questions are raised by this summons on the meaning to be given to the residuary gift in the codicil. The testatrix died without giving any directions in writing as to the charitable purposes to which she wished her residuary estate to be applied, and the first question is whether she has manifested a charitable intention sufficiently clearly to enable the court to say that the residuary estate is impressed with a charitable trust notwithstanding that the particular charitable purposes are not indicated. Assuming this question to be answered in the negative, the next question is: Does the executor take the residue beneficially or is he a trustee thereof for the next-on-kin. As to the first question there is in my opinion no good charitable trust declared. In the event which has happened there is a discretion vested in the executor under which he might devote the residue to objects and purposes other than those of a charitable character, and in that state of things it is impossible to say that there is a good charitable trust. Upon the second question, it is to be observed that there is no direct gift of the residue to the executor, he holds it and is to apply it for such charitable purposes as the testatrix might direct, or to retain it for such objects and purposes as he may select. *Primâ facie* he holds the property in trust for these objects, and if the codicil had stopped there I think it would have been entirely covered by the authority cited by counsel for the next-of-kin, namely, *Vezey* v. *Jamson* (1 Sim. & St. 69), where it was held that executors to whom the residue was given to be disposed of at their pleasure for charitable or public purposes held it as trustees for the next-of-kin as soon as it was determined that the trust expressed was too general and indefinite to be executed. But the codicil here goes on to say "and to be at his own disposal," and the question arises whether the addition of these words operates to give him a beneficial interest in the residue. The case of *Re Howell* (1915, 1 Ch. 241), cited by counsel on behalf of the executor, was one of some difficulty. In that case there was a direct gift of the residue to the executor which the court held on the language used, to be a gift to him as an individual and it is true that this construction was arrived at largely, if not mainly, by reason of the use of the words "at his own disposal." I have the same words here, and I have to determine whether they are sufficient in this testamentary disposition to show that the testatrix intended to give him the residue as an individual. I do not think they are. There is no gift to him, he holds the residue as a representative because he takes it by virtue of his office, and there is a legacy given to him as executor. Taking all these circumstances together, I am not prepared to hold that the executor takes the residue beneficially, but he holds it as trustee for the next-of-kin of the testatrix.—COUNSEL: *Nutter, Dighton Pollock, J. G. Wood.* SOLICITORS: *W. H. Hales; Solicitor to the Treasury; Sayer, Ledgard and Smith.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

In re WARD: HARRRISON *v.* WARD.

Peterson, J. 11th January.

REVENUE—INCOME TAX—PAYMENT BY HUSBAND—HUSBAND'S RIGHT TO INDEMNITY OUT OF ESTATE OF WIFE—INCOME TAX ACT, 1842 (5 & 6 Vict., c. 35), s. 45.

A husband liable under the Income Tax Act, 1842, to pay his wife's income tax is not entitled, either at law or in equity, to claim an indemnity against his wife's estate in respect of payments for her income tax made by him in accordance with the statute.

This was an originating summons taken out by the executors of the will of the testatrix asking whether certain sums claimed by the Crown for income tax and super tax and not accounted for during the lifetime of the testatrix, in respect of securities comprised in the settlement of which the testatrix was tenant for life, ought to be borne by the estate or by the husband. During the wife's lifetime the husband, whose income was very small, had not applied for a separate assessment, and the wife, whose income was very large, had herself paid the income tax in respect of her income. Now the husband had been assessed for the sums in question under s. 45 of the Income Tax Act, 1842, and claimed to be indemnified against his wife's estate in respect thereof.

PETERSON, J., after stating the facts, said: Section 45 of the Income Tax Act, 1842, provides that the profits of any married woman living with her husband shall be deemed the profits of the husband, and the same shall be charged in the name of the husband and not in her name or in the name of her trustees. The result of that is that the liability to tax in the case of a married woman living with her husband is thrown upon the husband and not upon the wife. It has been contended on behalf of the husband that, although he is the person who under the section is liable to pay the tax, he is entitled to claim an indemnity from his wife for the amount of tax which he paid in respect of her income. I have not been convinced by the argument that there is any such right of indemnity. The obligation under the section is the husband's and not the wife's. The Act does not provide that the husband shall have any right of indemnity for payment made by him in compliance with the section, nor has the husband in my judgment any right of indemnity in equity for what he paid in accordance with the liability imposed upon him by the statute.—COUNSEL: *Harman; Hughes*, K.C., and *Wilfred Hunt; Mumford.* SOLICITOR: *Shirley W. Woolmer.*

[Reported by L. M. MAY Barrister-at-Law.]

In re SPRINGFIELD'S SETTLEMENT: DAVIES *v.* SPRINGFIELD.

Russell, J. 18th January.

HUSBAND AND WIFE—MARRIAGE SETTLEMENT—GIFT TO CHILDREN OF FIRST OR ANY FUTURE WIFE—SUBSEQUENT FORM OF MARRIAGE WITH DECEASED WIFE'S SISTER—DECEASED WIFE'S SISTER'S MARRIAGE ACT, 1907 (7 Edw. 7, c. 47), ss. 1 and 2.

Where settlement funds were to be held in trust for the children of A as well by B as by every and any future wife he might marry, and A, after the death of B, by whom he had three children who all attained 21 in his lifetime, went through the form of marriage with the sister of his dead wife and had three children by her, and subsequently the Deceased Wife's Sister's Marriage Act, 1907, by s. 1 legalized that marriage.

Held, that the effect of s. 2 was to provide that rights of property existing at the date of that marriage were not to be altered or interfered with, and that accordingly the children of the second marriage took no share of the settlement funds.

In re Whitfield (1911, 1 Ch. 310) *applied.*

This was a summons to determine the effect of s. 2 of the Deceased Wife's Sister's Marriage Act, 1907, upon a marriage settlement. The facts were as follows: Under the marriage settlement of T. O. Springfield and R. M. Mandeville funds were assigned to trustees upon trust to pay the income to the husband for life, and after his death to his wife for life, if she survived him, and after the death of the survivor of them "upon trust for all and every the child and children of T. O. Springfield as well by the said R. M. Mandeville as by every and any future wife he shall marry who being a son or sons shall live to attain the age of twenty-one years or being a daughter or daughters shall live to attain that age or be married to be divided amongst them if more than one in equal shares as tenants in common." R. M. Springfield died in 1874 leaving three children all of whom attained 21 before the death of T. O. Springfield in 1920.

In 1884, T. O. Springfield went through the form of marriage with his deceased wife's sister, such marriage being then invalid, and by her he had three children. Section 1 of the Deceased Wife's Sister's Marriage Act, 1907, provided that no marriage theretofore contracted between a man and his deceased wife's sister should be deemed to have been or should be void or voidable as a civil contract by reason of such affinity, and s. 2 provided that no right, title, estate or interest, whether in possession or expectancy, and whether vested or contingent, at the time of the passing of the Act existing in, to or in respect of any property should be prejudicially affected by reason of any marriage heretofore contracted as aforesaid being made valid by this Act. The children of the first marriage contended that they had a vested interest in the trust fund expectant on the death of their father, which s. 2 protected. The children of the second marriage contended that the court should be guided by the plain intent of the settlement that all the children of T. O. Springfield should share equally.

RUSSELL, J., after stating the facts, said: The words of the settlement "children by any future wife," must mean children of any future legal wife. The second marriage was legalized by s. 1 of the Deceased Wife's Sister's Marriage Act, 1907, the children of it are legitimate, and if the Act had ended there they would have been entitled to share equally with the children of the first marriage; but s. 2 provides that no interest existing in any property at the time of the passing of the Act shall be prejudicially affected by the second marriage. At the time the Act came into operation the children of the first marriage had all attained 21 and had a vested interest in the trust fund expectant on the death of their father, although such interest was liable to be diverted by the birth of any children of a future marriage of their father who should attain 21 or if daughters should marry under that age. The meaning of s. 2 is that that vested interest is not to be prejudicially affected by the second marriage being validated by the Act, as it would be if the children of the second marriage were held entitled to share in the fund. I think this view is supported by the case of *In re Whitfield* (*supra*), where the testator gave his real and personal estate to trustees on trust to pay the income to his wife during widowhood, with a gift over on her re-marriage. The widow married her deceased sister's husband, and the marriage being then illegal, she did not cease to be the testator's widow, but when the Act was passed in 1907 the question was raised whether she was still entitled to the rents, profits and income. Parker, J., at page 314, said: "In my opinion the legislature meant to say: 'Though we are rendering valid as a civil contract a previous marriage which was not valid at the time of its being entered into, we do not intend to alter or interfere with any rights of property depending on the marriage not being valid. These are to remain unaffected, but as a civil contract the marriage is to be deemed to be valid.'" I am of opinion that this case is clearly within s. 2, and that the children of the second marriage take no share in the settlement funds.—COUNSEL: *Sheldon; A. Adams; J. W. F. Beaumont; Dighton Pollock.* SOLICITORS: *Bircham & Co.; Wedlake, Letts and Birds*, for *M. C. Batten*, Great Torrington, Devon.

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

In re WILKINSON'S APPLICATION.

Roche, J. 20th December, 1921, and 13th January, 1922.

INSURANCE (UNEMPLOYMENT)—EMPLOYMENT IN DOMESTIC SERVICE EXCEPT WHERE EMPLOYED IN ANY BUSINESS—CHARWOMAN—SOLICITOR'S OFFICE—UNEMPLOYMENT INSURANCE ACT, 1920 (10 & 11 Geo. 5, c. 30) s. 1, Sched. I, Part II (*b*).

A charwoman, who cleans a solicitor's office, and who only works there out of office hours, is not employed in the business of a solicitor so as to be insurable under the Unemployment Insurance Act, 1920.

This was a question referred under s. 10 of the Unemployment Insurance Act, 1920, for the decision of the court as to whether a charwoman employed in a solicitor's office was employed in the business, and consequently insurable under the statute. The charwoman was employed in the offices of a solicitor, and it was her duty to clean the rooms before and after office hours. By s. 1 of the Act it is provided: "Subject to the provisions of this Act, all persons of the age of sixteen and upwards who are engaged in any of the employments specified in Part I of the First Schedule to this Act, not being employments specified in Part II of that schedule . . . . shall be insured against unemployment in manner provided by this Act." Amongst the excepted employments specified in Part II of the First Schedule are "(*b*) Employment in domestic service, except where the employed person is employed in any trade or business carried on for the purposes of gain."

ROCHE, J., in the course of a considered judgment, said that three points arose: (1) whether the charwoman was employed in domestic service; (2) whether the occupation of a solicitor was a business, and (3) whether the charwoman was employed in the business. As to (1) he held that she was employed in domestic service. In view of his decision as to (3) (although his present opinion was that a solicitor's business was a business within the meaning of the statute) it was not, in his opinion, necessary to decide the second point for the purposes of this case. In his lordship's opinion, although persons could not transact business satisfactorily in offices which were not kept clean or which were without fires, it would be stretching language to hold that a person who only worked outside business hours was actually employed in the business. The result was that she was not insurable. This decision did not depend on the nature of the employment. That was material, but it was not the crucial test. It could not be conceived that the charwoman would describe herself as employed in a solicitor's business, but she would probably describe herself as employed in cleaning the office.—COUNSEL: *R. S. T. Chorley; Attorney-General* (*Sir Gordon Hewart*, K.C.), and *C. W. Lilley.* SOLICITORS: *B. Wilkinson; Solicitor to the Ministry of Labour.*

[Reported by J. L. DENISON, Barrister-at-Law.]

CASE OF LAST SITTINGS.

Court of Appeal No. 2.

SOCIÉTÉ DES HOTELS LE TOUQUET PARIS-PLAGE *v* CUMMINGS.

20th December, 1921.

CONTRACT—DEBT INCURRED ABROAD—FOREIGN CURRENCY—ACTION IN ENGLAND—CLAIM IN FOREIGN CURRENCY—PAYMENT ABROAD IN FOREIGN CURRENCY AFTER ACTION BROUGHT—WHETHER ACCORD AND SATISFACTION—DISCHARGE OF DEBT.

The defendant, a married woman, in 1914, *incurred a debt of* 18,035 *francs, to the plaintiffs, a company incorporated in France. The plaintiffs issued a specially indorsed writ in England claiming* 18,035 *francs "the English equivalent of which on December* 31, 1914, *is* £715 13*s.* 4*d.*" *After the issue of the writ the defendant called at the plaintiffs' hotel in France and paid* 18,035 *francs to a manager of the plaintiffs, who was unacquainted with the facts, and he gave her a receipt for the amount as money deposited with him. The defendant then pleaded that after action brought, the claim had been satisfied by payment of* 18,035 *francs to the plaintiffs.*

Held (allowing the appeal), that the debt, being payable in French currency, had not ceased to be a French debt by reason of the action being brought in England, and that notwithstanding the depreciation in value of French currency as compared with English currency since the date when the debt became due and payable, the defendant's plea that after action brought she had satisfied the plaintiffs' claim by payment was made out.

Appeal from the judgment of Avory, J. (1921, 3 K.B. 459; 91 L.J. K.B. 17). The plaintiffs, by specially indorsed writ dated 1st November, 1919, claimed from the defendant, a married woman, the sum of £888 5*s* 7*d*. The indorsement on the writ was against the defendant for board and residence at the Hermitage Hotel, Le Touquet, Paris-Plage, and for money lent. "Particulars, August 4, 1914: To supplying board and residence to the defendant at the above hotel to this date, 7,260 francs. To money lent by the plaintiffs to the defendant, 10,775 francs. Total, 18,035 francs. The English equivalent of which on December 31, 1914, is £715 13*s*. 4*d*. To interest thereon at £5 per cent. per annum from December 31, 1914, £172 12*s*. 3*d*." The writ was subsequently amended by striking out the claim for interest. The defendant, by her defence, delivered on 2nd February, 1920, admitted the debt, but pleaded that her liability in sterling should be reckoned at the rate of exchange prevailing at the date when judgment would be given in the action, and not according to the rate of exchange prevailing on 31st December, 1914. The defendant in 1914 stayed at the plaintiffs' hotel at Le Touquet, and by 4th August had incurred a liability of 18,035 francs for board and lodging and money lent on that date. The defendant signed an undertaking to pay the plaintiffs in cash in France the amount of her debt "as soon as the European crisis permits, in any case before the end of the year." On 9th May, 1920, the appellant and her husband went to the plaintiffs' hotel in France and there tendered to a manager of the plaintiffs, who was not acquainted with the facts, the sum of 18,035 francs. The manager accepted the money and gave the defendant a receipt for the amount "as for money deposited with him." In taking this course the defendant, as she stated in her deposition, was acting on the advice of her solicitors. On 17th May, 1920, the defendant

delivered a further defence that on 9th May, 1920, she had satisfied the claim by the payment of 18,035 francs. Avory, J., held that the plaintiffs, on the issue of the writ, were entitled to recover £715. With regard to the plea of payment, his lordship found, as a fact, that the payment was not accepted by the plaintiffs in satisfaction of the debt. He gave judgment for the plaintiffs for £715 out of which credit must be given for 18,035 francs, calculated at the rate of exchange prevailing on 9th May, 1920, when the payment was made to the plaintiffs. The defendant appealed.

BANKES, L.J., said that it was not disputed that the person who received the money had the necessary authority to receive debts due to the respondents. The person to whom the money was paid knew that the appellant was paying it in discharge of a debt due to the company. The respondents knew all the facts, and after the money was paid to their representative they kept it without objection or protest. Upon the question whether upon proof of these facts the plea of payment was made out, it seemed immaterial to consider whether the person to whom the money was paid knew what the amount of the debt was, or whether or not an action had been commenced to recover it. The only ground on which it had been urged that the plea of payment had not been proved was that, payment not having been made within the agreed time, the claim was really one for damages, which could only be met by proof of an accord and satisfaction, and that had not been proved. That ground, however, could not prevail. The technical question whether a claim to recover a debt not paid on the due date was a claim in damages which precluded any plea of payment was one which was often referred to under the old system of pleading. In Bullen and Leake, 3rd edition, at page 478, the editors said: "In the common case of a debtor paying his creditor a debt *post diem*, the defence is really one of accord and satisfaction, though from the frequent recurrence of the transaction it is looked upon as a distinct defence under the name of payment." Unless this was so, a defence of payment after action could never have been recognised. If the plea of payment was pleaded generally without limitation, it was taken as pleaded to the whole cause of action, and must show a payment in satisfaction of the damages as well as of the debt: *Randall* v. *Moon* (1852, 12 C.B. 261). Payment after action brought was not a complete defence unless made in satisfaction of all damages and costs of the action as well as of the debt. If it was made in respect of the debt only, the plaintiff was entitled to continue the action for nominal damages, and the costs of the action: *Goodwin* v. *Cremer* (1852, 18 Q.B. 757), and Bullen and Leake on Pleading, 3rd edition, p. 663. That payment of a debt made and accepted after the time of payment, but before action, was a complete defence, and that the creditor was not entitled to sue for nominal damages was settled by *Beaumont* v. *Greathead* (1846, 2 C.B. 494); see per Maule and Cresswell, JJ. (*ibid.*). The appellant, having proved that she had paid the amount of the debt at the place at which, and in the currency in which, it was payable, and the amount which she had paid having been accepted and retained without protest or objection, the plea of payment after action brought had been made out, and judgment would be entered for the plaintiffs for nominal damages only, and the respondents would have their costs down to and including the date when the defence of payment after action was pleaded, and the appeal must be allowed with costs.

SCRUTTON, L.J.: The questions were: (1) was such a payment when retained by the plaintiffs' accord and satisfaction, so as to be a defence to the action? (2) Were the plaintiffs, who received in France the amount of their debt in francs in 1920, entitled to claim in addition such a sum in English money as made up their receipts to the value of that number of francs in English money in 1914, when the debt was due? Under the old pleading, payment after the due date could not be pleaded as payment, but only as accord and satisfaction. "Where money is paid, not in performance of a promise at the precise day on which it ought to have been paid, but in satisfaction of a breach of promise, there must be not only payment but acceptance in satisfaction"; see per Williams, J., in *Chambers* v. *Miller* (1862, 13 C.B.N.S. 125) at p. 134. The reason was that the claim was both for the debt and damages for non-payment, and there must be shown to be accord both as to the debt and the damages; see *Cook* v. *Hopewell* (1856, 11 Exch. 555). Accord and satisfaction is a question of fact; see *Day* v. *McLea* (1889, 22 Q.B.D. 610). In this case there was no accord and satisfaction. But it did not follow, necessarily, that the plaintiffs were therefore entitled to the sum claimed. The plaintiffs were owed 18,035 francs payable in France, and they must be content with 18,035 francs paid in France. Judgment should, therefore, be entered for them for nominal damages only, with costs up to the time of the plea of payment of the debt.

ATKIN, L.J., in the course of his judgment, said that the defendant was sued in this country for a French debt, and that by paying the debt in France she discharged the debt. It was not suggested that she thereby discharged herself of the obligation to pay costs. The plaintiffs should have their costs up to the date of the plea of payment. As the defendant ought not to have been advised to take the course which she did without communicating with the plaintiffs' legal advisers, the defendant should not have the costs of the action after plea. Appeal allowed.—COUNSEL: *Schiller*, K.C., *Giveen* and *Bickmore*; *Compston*, K.C., *Frampton*, and *O'Malley*. SOLICITORS: *Cohen and Cohen*; *Hutchison and Cuff*.

[Reported by T. W. MORGAN, Barrister-at-Law.]

High Court—King's Bench Division.

RUFFY ARNELL, &c. AVIATION CO. LTD. *v.* THE KING

6th, 7th, 8th, 9th, 12th, 13th, 15th, 16th and 20th December, 1921.

PETITION OF RIGHT—POWER TO AMEND—CONTRACT—DURATION OF THE WAR—DATE OF TERMINATION OF THE WAR—PETITION OF RIGHT ACT, 1860 (23 & 24 Vict. c. 34), s. 7—TERMINATION OF THE PRESENT WAR (DEFINITION) ACT, 1918 (8 & 9 Geo. 5, c. 59), s. 1 (1).

The court has power to amend a petition of right on the application of a subject, provided the provisions of ss. 1 and 2 of the Petition of Right Act, 1860, are not defeated by the amendment.

The War Office entered into a contract with an aviation company for the duration of the war.

Held, that the date of the termination of the war was, for the purposes of the contract in question, 14th December, 1918, i.e., the date on which the armistice was renewed.

This was the petition of right of a company formed for the purpose of giving instruction in aviation. The company carried on a school of aviation prior to August, 1916, and in that month received a written offer from the War Office, part of which offer was as follows: "As a temporary measure and for the duration of the war such schools as agree voluntarily will be placed under direct military supervision and allotted pupils in numbers which can be trained efficiently with the resources and equipment available." The normal training fee for each pupil was to be £100. On the 16th August, 1916, the company signed a form of agreement which accompanied the offer from the War Office. On the 24th June, 1918, the War Office intimated that the agreement with the company would be terminated on 1st July, 1918. The company brought this petition of right claiming damages for breach of contract. At the hearing an application was made by the suppliants for leave to amend the petition by alleging that a variation of the original contract had been made during the first three months of 1918. This application was opposed by the Crown. The two main points which arose were (1) as to the power of the court to amend a petition without the consent of the Crown, and (2) as to the meaning of the term "duration of the war" in respect of contracts. By s. 7 of the Petition of Right Act, 1860, it is provided: "So far as the same may be applicable, and except in so far as may be inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing, and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set off, appeal, and proceedings in error in suits in equity, and personal actions between subject and subject, and the practice and course of procedure of the said courts of law and equity respectively for the time being in reference to such suits and personal actions, shall, unless the court in which the petition is prosecuted shall otherwise order, be applicable and apply and extend to such petition of right: Provided always that nothing in this statute shall be construed to give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy before the passing of this Act." By s. 1 (1) of the Termination of the Present War (Definition) Act, 1918, it is provided: "His Majesty in Council may declare what date is to be treated as the date of the termination of the present war, and the present war shall be treated as having continued to, and as having ended on that date for the purposes . . . except where the context otherwise requires, of any provision in any contract . . . referring, expressly or impliedly, to the present war or the present hostilities."

MCCARDIE, J., in delivering a considered judgment, said that the object of the Act of 1860 was to strengthen the rights of the subject against the Crown, and to give the subject a more speedy, inexpensive, and satisfactory way of vindicating his claims. Section 7 was sufficiently wide to give power to the court to amend a petition of right. Any amendment, however, which the court might allow could not be one which defeated the provisions of ss. 1 and 2 of the Act of 1860. But an amendment such as a mere change of date or of amount or a variation in the formulation of a contract, could be granted, if the substance of the case was the same. The amendment asked for would, therefore, be allowed. The Crown, in terminating the agreement on 1st July, 1918, had committed a breach of contract, and the suppliants were entitled to damages. Their claim had, however, in his opinion, been grossly exaggerated. With regard to the question as to the meaning of the term "duration of the war," the present contract could not have been intended to continue until the official termination of the war in August, 1921. In his lordship's view the parties contemplated as the "duration of the war," the substantial continuance of active hostilities, and the proper date to be taken was 14th December, 1918, when the Armistice was renewed. By then the military power of Germany had been broken and the supremacy of the Allies had been established. The period to be regarded as the length of the breach was from 1st July, 1918, to 14th December, 1918. The Company was, owing to the abrupt manner in which the contract had been terminated, entitled to general damages for the inconvenience, trouble and expense caused by the breach of contract.—COUNSEL: *Upjohn*, K.C., and *Craig Henderson*; *Sir Gordon Hewart*, A.G., and *Giveen*. SOLICITORS: *Joynson-Hicks & Co.*; *Treasury Solicitor*.

[Reported by J. L. DENISON, Barrister-at-Law.]

New Orders, &c.

Rules of the Supreme Court.

ORDER 36, RULES 45 & 47B.

ORDER MADE BY THE LORD CHANCELLOR DATED SECOND DAY OF FEBRUARY, 1922.

I, Frederick Viscount Birkenhead, Lord High Chancellor of Great Britain, by virtue of Order 36, Rules 45 and 47B of the Rules of the Supreme Court and every other power enabling me in that behalf, hereby order and direct as follows:—

1. The Order made by me upon the 14th day of November, 1921, directing the method of distribution of causes or matters amongst the Official Referees is hereby revoked.

2. All causes or matters specified in the schedule to this Order (being causes or matters referred to an Official Referee in respect of which no particular Referee was named in the Order referring them and now entered in the list of G. A. Scott, Esq., or causes or matters referred to G. A. Scott, Esq., in pursuance of the said Order of the 14th November, 1921, and now so entered) shall be transferred to the other Official Referees in manner following, that is to say, those in Part I of the said schedule shall be transferred to Edward Pollock, Esq., and those in Part II of the said schedule shall be transferred to Sir Francis Newbolt, K.C. Every cause or matter transferred in accordance with the directions of this Order shall be entered in the list of Edward Pollock, Esq., or of Sir Francis Newbolt, K.C., as the case may be, in the position which it would have taken in that list, if it had been entered therein at the date when it was entered in the list of G. A. Scott, Esq., or, in the case of causes or matters transferred to G. A. Scott, Esq., in pursuance of the said Order of the 14th November, 1921, at the date when it was entered in the list of Edward Pollock, Esq.

3. All causes or matters which are hereafter referred to an Official Referee shall, if a particular Referee is named in the Order, be referred to that Referee, but if no particular Referee is so named, shall be distributed amongst the Official Referees by the Clerk to the Senior Official Referee in rotation.

4. Save as in this Order expressly provided nothing in this Order shall affect any cause or matter which before the date of this Order has been referred to any Official Referee in accordance with the Rules of the Supreme Court or the said Order of the 14th November, 1921.

SCHEDULE.

PART I.

Dumbekalm v. *Lawrence.*	*McGregor* v. *Robinson.*
Heal v. *Keith.*	*Wrench* v. *Jackson.*
Lee v. *Lynn.*	*Stanfield Ltd.* v. *Simeon Eng. Co.*
Grange v. *Sharpe.*	*Williams* v. *Cundell.*
Burton v. *Harding.*	*Saill* v. *Barnett.*
Hooper v. *Hodgkins.*	*Hooper* v. *Hodgkins.*
Sharp v. *Shadbolt.*	*Martin* v. *Hume.*
Beard v. *Smart.*	*Kalesnikoo* v. *Gant.*
Taylor v. *Gerard.*	*Piper* v. *Bridger.*
Silverthorne v. *Rosen.*	*Cooper & Co.* v. *Goldberg.*

PART II.

Kingett v. *Colls.*	*Collins* v. *Lund.*
Tully v. *Brockley.*	*Gluck* v. *Houlditch.*
Harding v. *Gear & Walker.*	*Jackman* v. *Chevan.*
Perry & Perry v. *Hissey.*	*Hughes Eng. Wks.* v. *Maritime Salvors Ltd.*
Taylor v. *Sibthorpe.*	*Jury's Impl. Pictures* v. *New Royalty Kinema Ltd.*
Ratcliffe v. *Kinsler.*	*Foulds Ltd.* v. *C.W.M. Trading Co.*
Holland v. *Bailey.*	*J. K.Cooper & Sons Ltd.*v. *H.W. Idle.*
Swarren Ltd. v. *Indicators Ltd.*	*Harris* v. *Harris.*
Westerman v. *Boulting.*	*Head* v. *Stockford.*
Fred Hayden Ltd. v. *Mansell.*	*Short* v. *Balmain.*
J. Fry & Co. v. *A. Emlyn Jones & Co.*	*Gerhard & H.* v. *Eichenbaum.*
Kimmond v. *Oakden & Co.*	*Langton Ltd.* v. *Wight.*
Lane v. *Sargeant Bros.*	*Arthur* v. *Hill.*
H. Naugal & Co. v. *S. Allison & Co.*	*Muswell Hill Garage* v. *Wisenthal.*
Hickman v. *Grainger.*	
Bargmans Ltd. v. *Noble.*	

NOTICE.

COLONIAL STOCK ACT, 1900 (63 and 64 Vict., c. 62).

ADDITION TO LIST OF STOCKS UNDER SECTION 2.

Pursuant to Section 2 of the Colonial Stock Act, 1900, the Lords Commissioners of His Majesty's Treasury hereby give notice that the provisions of the Act have been complied with in respect of the undermentioned Stocks registered or inscribed in the United Kingdom:—

Government of South Australia 6 per cent. Inscribed Stock, 1930/40.

The restrictions mentioned in Section 2, sub-section (2), of the Trustee Act, 1893, apply to the above Stocks (see Colonial Stock Act, 1900, Section 2).

Societies.

United Law Society.

The Annual Dinner was held at the Café Monico on Monday, the 30th January, 1922, Lord Justice Atkin presiding.

After the loyal toasts, the toast of His Majesty's Judges was proposed by Mr. R. C. Nesbitt; Mr. Justice McCardie replied. The legal profession was proposed by the Hon. Evelyn Hubbard; J. F. W. Galbraith, Esq., K.C., and Mr. J. J. D. Botterell (the President of the Law Society) replied. The United Law Society was proposed by Lord Justice Atkin and Mr. G. B. Burke (the Vice-Chairman) replied. The visitors were proposed by Mr. J. R. Yates; J. H. Thorpe, Esq., M.P. replied. Lord Justice Atkin was proposed by Mr. B. A. Elliman (the Secretary) and his Lordship replied.

Lord Justice Atkin has consented to become a Vice-President of the Society.

Law Association.

The usual monthly meeting of the directors was held on the 3rd inst., Mr. E. B. V. Christian in the chair. The other directors present were Mr. T. H. Gardiner (treasurer), Mr. P. E. Marshall, Mr. C. F. Leighton, Mr. A. E. Pridham, Mr. J. E. W. Rider, Mr. W. M. Woodhouse and the Secretary, Mr. E. E. Barron. A special vote of regret for the recent death of Mr. Spencer Whitehead, one of the Treasurers, and sympathy with his widow was unanimously passed, and Mr. J. E. W. Rider was appointed a Treasurer in his place until the next annual general Court. A sum of £120 was voted in relief of deserving cases, nine new life members and twenty-eight new annual subscribers were elected, and other general buisness transacted.

The Late Mrs. R. H. Horton-Smith.

A correspondent of *The Times* writes:—

By the death of Mrs. Marilla Horton-Smith, which took place on 26th January, in her 84th year, there passes one who held a position which has probably been unique in the annals of either of the two older universities. Widow of Richard Horton Horton-Smith, K.C., a Master of the Bench and in 1903 treasurer of the Honourable Society of Lincoln's Inn, who died in November, 1919, in his 88th year, she was the eldest daughter of John Baily, Q.C., a Master of the Bench of the same Inn and counsel to the University of Cambridge. Her father, her only brother, her husband, and her two eldest sons were, all of them, Fellows of the same Cambridge college, St. John's. The third son of the marriage, a foundation scholar of the same college, did not live to win a Fellowship, but in his memory his father founded at Cambridge in 1900 the University prize which is called after his name, "the Raymond Horton-Smith Prize." Her brother's two sons, who went to the university, were foundation scholars of the same college, and her eldest grandson is also a foundation scholar of the same college, and stroked Cambridge to victory over Oxford on the Thames in the last two years.

Mrs. Horton-Smith was an excellent linguist and a lady with a wide range of knowledge and of singular personal charm. She retained all her faculties and maintained all her interests to the end.

A "Times" Report.

The House of Lords—the Lord Chancellor, Lord Buckmaster, Lord Atkinson, Lord Parmoor, and Lord Sumner, says *The Times*, began the hearing on the 2nd inst. of an appeal—*Palgrave, Brown & Son, Ltd.* v. *The Owners of the s.s. Turid*—which raised the question whether a special custom existed at Yarmouth governing the unloading of timber.

The Courts below found themselves governed by a decision given in 1877 by the Lord Chief Justice (Lord Coleridge) and Lords Justices Bramwell and Brett. The House is now being asked to say that this decision of 1877, which appears to have governed such cases for forty-five years, is wrong. It appears that the case was unreported in any legal volume, and that the only available report was that which appeared in *The Times* during May, 1877, and the report, including counsel's and solicitors' names, extended to 437 words, of which the judgment made twenty-five:—

"Lord Justice Bramwell now delivered judgment in favour of the plaintiff, the shipowner, to the effect that the contract could not be waived by custom."

It was added that Lord Coleridge and Lord Justice Brett concurred.

Mr. MacKinnon, K.C., asking for the reversal of this judgment, remarked that it was saved from oblivion by the Editor of *The Times*.

The Lord Chancellor said that very few things appeared to escape the attention of the Editor of *The Times*.

Mr. William Proctor (57), of Cavendish-road, Chorlton-cum-Hardy, and of Brazennose-street, Manchester, solicitor's clerk, left estate of gross value, £19,480.

A Commandeered Hotel.

Judgment, says *The Times*, was given by the War Compensation Court on 1st February, on the appeal of Frederick Hotels, Limited, for revision of the sum awarded by the Defence of the Realm Losses Commission in January, 1918, for the occupation of the Hotel Great Central during the war.

Sir Francis Taylor, chairman, delivering a considered judgment, said the hotel company submitted that they were entitled to additional compensation through loss of profits estimated at £43,965 from January, 1918, to 31st December, 1919, and in addition £9,400 for staff expenses during reinstatement. The court agreed that during that period there was a general improvement in the business of such hotels as had the good fortune to remain unrequisitioned. But the court rejected the comparison submitted between the trade done at the Hotel Russell and at the Hotel Great Central, and the application failed because the court was satisfied that any excess of profits over the £20,274 awarded would be solely due to conditions arising from the war, and were not recoverable from the Crown under s. 2 (3) of the Indemnity Act.

As to the subsidiary claim for £9,346 for staff expenses, those expenses were considered reasonable for the re conditioning of the hotel, and would be allowed. The court was of opinion that the claimants should receive rent at the rate fixed by the Royal Commission—namley, £20,274 per annum.

Obituary.

Mr. Seymour Bushe, K.C.

Every member of the Irish Bar and a great many of their colleagues in England will learn with regret that Mr. Seymour Bushe, K.C., died at his house in Drayton-gardens on 27th January, at the age of 68 years.

Seymour Coghill Hort Bushe was the son of the Rev. Charles Bushe, of Castlehaven, Co. Cork, and the grandson of Chief Justice Bushe, from whom he seemed to have inherited great forensic ability. He had a remarkable gift of advocacy, with an eloquence which was never florid, and indeed at times approached true oratory. It was no uncommon occurrence for Judges to compliment him warmly on his addresses to juries. His university career was prophetic of his work in the Four Courts and on the Munster Circuit. After beginning his education at Rathmines School, Dublin, he went to Trinity College, Dublin, where he took a classical scholarship and a senior moderatorship with the Berkeley Gold Medal, and won the gold medal for Oratory at the College Historical Society. He was called to the Bar by the King's Inns in 1879, and he took silk in 1892. Seven years later he was called to the Bar by the Inner Temple. In 1886 he married Kathleen Maude, daughter of the first Earl de Montalt. Lady Kathleen Bushe survives him.

Legal News.

Information Required.

Re **William Little Johnson,** deceased, late of 227 and 228 Blackfriars Road, S.E. and "Normandy," Cedars Road, Sutton, Surrey, Grocer. Will any Solicitor or Firm of Solicitors who prepared any Will or Wills or other testamentary dispositions for the above-named deceased communicate with the undersigned. Burton & Son, Bank Chambers, Blackfriars Road, S.E1., Solicitors.

To Solicitors, Bankers and others.—Any person concerned in the preparation of or having the custody of the Will of **James Cram,** late of 22, Rydal-road, Streatham, is requested to communicate with Broad & Son, 1, Great Winchester-street, London, E.C.

Business Announcement.

Messrs. Goodman, Saunders Squires & Co., of 21, St. Helen's-place, Bishopsgate, E.C.3, inform us that owing to the demolition of their present offices, it has become necessary for their firm (after nearly thirty years' practice in Bishopsgate) to find other accommodation. By arrangement with their friends, Messrs. G. F. Hudson Matthews & Co., they are as from the 1st January, 1922, carrying on their practice upon the premises of that firm, and their address accordingly is 32, Queen Victoria-street, E.C.4. Telephone No.: Central 1941.

Appointments.

Mr. Bernard Archibald Platt, of the Inner Temple, Barrister-at-Law, has been appointed to be Judge of His Majesty's Supreme Court for Egypt.

Mr. R. H. Balloch has been elected a Master of the Bench of the Inner Temple.

Mr. Frederick John Williams, of 15, Devonshire Square, Bishopsgate, E.C.2, has been appointed Clerk of the Peace for the County Borough of West Ham.

The Board of Trade have appointed Mr. Frank Townsend Garton to be an Official Receiver attached to the High Court of Justice in Bankruptcy, and have assigned to him proceedings in which the initial letter of the first surname of the debtor or debtors is any of the letters G to O.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Peterson.
Monday Feb. 13	Mr. Bloxam	Mr. Synge	Mr. More	Mr. Jolly
Tuesday 14	Hicks Beach	Garrett	Jolly	More
Wednesday ... 15	Jolly	Bloxam	More	Jolly
Thursday 16	More	Hicks Beach	Jolly	More
Friday 17	Synge	Jolly	More	Jolly
Saturday 18	Garrett	More	Jolly	More

Date	Mr. Justice Sargant.	Mr. Justice Russell.	Mr. Justice Astbury.	P. O. Lawrence.
Monday Feb. 13	Mr. Synge	Mr. Garrett	Mr. Bloxam	Mr. Hicks Beach
Tuesday 14	Garrett	Synge	Hicks Beach	Bloxam
Wednesday ... 15	Synge	Garrett	Bloxam	Hicks Beach
Thursday 16	Garrett	Synge	Hicks Beach	Bloxam
Friday 17	Synge	Garrett	Bloxam	Hicks Beach
Saturday 18	Garrett	Synge	Hicks Beach	Bloxam

General.

Mr. Vernon Russell Smith, K.C. (72), of Friars Cross, Limpsfield, Surrey, for some years one of the leaders of the Chancery Bar, left estate of gross value, £50,705.

At Stratford Police Court, on 28th January, Leonard Henry Gaskill, of St. George's Park-avenue, Westcliff-on-Sea, was summoned for deserting his wife. Mr. F. A. Stern said that the parties were married in August, 1918, and in the following October the defendant went on active service to Salonika. The wife gave birth to a child, after being pregnant for 331 days, and the defendant, saying that he could not be the father, instituted divorce proceedings. She denied, however, that she had been unfaithful to him. The case came before the Lord Chancellor, and it was regarded as a most important one. Some of the very highest medical evidence was given, and on 30th July the Lord Chancellor gave a considered judgment, as a result of which the husband's suit was dismissed, and there was no stain on the wife's chastity. Since that time the wife had written asking if her husband intended to resume cohabitation, and he had replied that he did not. The magistrates granted the wife a maintenance order of 25s. a week.

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—FRIDAY, February 3

DUCHESS OF SUTHERLAND'S CRIPPLES' GUILD LTD. Feb. 25. Richard E. Clark, 17, Albion-st., Hanley.

CHARLES HARRISON LTD. Feb. 28. W. J. Willmoth, 53, Lune-st., Preston.

UNITED INTERNATIONAL SYNDICATE LTD. Mar. 14. R. B. Tyler, 1, Queen Victoria-st.

STEDMAN & CO. (LONDON) LTD. Mar. 8. Frank T. Shearcroft, 22, Newgate-st.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, February 3.

James Keiller & Son (Germany) Ltd.
Zenith Spring Blind Roller & Metal Co. Ltd.
Walter Ibbotson, Junr., Ltd.
Moore & Fletcher Ltd.
Boks & Pinto Ltd.
George Smith & Sons (Burnley) Ltd.
The Bwana M'Kubwa Copper Mining Co. Ltd.
Frank Rawcliffe & Co. Ltd.
Abbey Improved Chilled Shot Co. Ltd.
Stedman & Co. (London) Ltd.
Willison Brothers Ltd.
Otford Agricultural Co-operative Trading Society Ltd.
The Vining Tractor & Motor Manufacturing Co. Ltd.
The Anglo-French Wine Co. Ltd.
The Cecil Hydro (Norbreck) Ltd.
Wainfleet Farming Co. Ltd.
British-Chinese Overseas Trading Co. Ltd.
H. J. Parsons Ltd.
D. J. Davies & Son Ltd.
H. J. Menzies & Co. (Newcastle) Ltd.
Vending Machines Ltd.
J. Freeman and Co. Ltd.
The Louise Heilgers Correspondence College Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—FRIDAY, February 3

ABBOTT, JOHN, Bathpool, nr. Taunton. Taunton. Pet. Jan. 13. Ord. Feb. 1.

ALLEN, NOEL, Palmers Green. Edmonton. Pet. Dec. 30. Ord. Feb. 1.

ASCOTTS DRUG STORES, Kentish Town. High Court. Pet. Jan. 5. Ord. Jan. 31.

BARRELL, WILLIE A., Saham, Norfolk. King's Lynn. Pet. Jan. 6. Ord. Jan. 27.

BEATY, JAMES W., King's Lynn. King's Lynn. Pet. Feb. 1. Ord. Feb. 1.

BROWN, DAVID, Willenhall. Wolverhampton. Pet. Jan. 31. Ord. Jan. 31.

CASHMORE, HARRY, Netherton, nr. Dudley. Dudley. Pet. Jan. 11. Ord. Jan. 31.

CASSON, ARTHUR, Stanhope-ter. High Court. Pet. Nov. 11. Ord. Jan. 31.

CHESTER, JOHN W., Horncastle. Lincoln. Pet. Feb. 1. Ord. Feb. 1.

CLARKE, CHARLES E., Camden-rd. High Court. Pet. Dec. 30. Ord. Jan. 31.

COHEN, SOLOMON, Philpot-st., E. High Court. Pet. Dec. 16. Ord. Jan. 31.

COPESTAKE, JOHN T., Lincoln. Lincoln. Pet. Jan. 28. Ord. Jan. 28.

DERBYSHIRE, JAMES A., New Mills, Derby. Stockport. Pet. Jan. 30. Ord. Jan. 30.

DOWN, GILBERT, Launcells, Cornwall. Barnstaple. Pet. Jan. 31. Ord. Jan. 31.

ESTRIN, M., Ealing. Brentford. Pet. Dec. 23. Ord. Jan. 31.

GODDEN, HENRY, Lavenham. Colchester. Pet. Jan. 27. Ord. Jan. 27.

GRIMES, HENRY F., Alpington. Exeter. Pet. Jan. 30. Ord. Jan. 30.

GROOME AND PICKFORD, Milton-st. High Court. Pet. Jan. 3. Ord. Feb. 1.

HARGRAVE, JOHN H., Dewsbury. Dewsbury. Pet. Jan. 19. Ord. Jan. 30.

HASLAM, KATE, Praed-st. High Court. Pet. Nov. 24. Ord. Feb. 1.

HERBERT, WILLIAM J., Tonyrefail. Pontypridd. Pet. Jan. 30. Ord. Jan. 30.

HERRITEY, EDWARD, Portmadoc. Portmadoc. Pet. Jan. 30. Ord. Jan. 30.

HUDSON, THOMAS W., Westcliff-on-Sea. Chelmsford. Pet. Jan. 30. Ord. Jan. 30.

HUNT, WALTER W., Penygraig. Pontypridd. Pet. Feb. 1. Ord. Feb. 1.

JACOBS, J. M., Leman-st. High Court. Pet. Dec. 19. Ord. Feb. 1.

JAFFE, WOOLFE, Lower Broughton. Salford. Pet. Dec. 9. Ord. Jan. 27.

JEFFERSON, JAMES, Blackburn. Blackburn. Pet. Feb. 1. Ord. Feb. 1.

LAMOTTE, B., Piccadilly. High Court. Pet. Dec. 31. Ord. Feb. 1.

LOWE, GEORGE E., Bolton-upon-Dearne. Sheffield. Pet. Jan. 28. Ord. Jan. 28.

MAGUIRE, ALFRED T., Bow-rd. High Court. Pet. Jan. 31. Ord. Jan. 31.

MARGETTS, GEORGE, Birmingham. Worcester. Pet. Jan. 11. Ord. Jan. 28.

MARTIN, JONATHAN, Crymmych. Carmarthen. Pet. Jan. 19. Ord. Jan. 31.

MCNAUGHTON, WILLIAM J., North Shields. Newcastle-upon-Tyne. Pet. Jan. 31. Ord. Jan. 31.

MASTER, REGINALD A. G., Maida Vale. High Court. Pet. Jan. 30. Ord. Jan. 30.

M. MOURADIAN & Co., Manchester. Manchester. Pet Jan. 10. Ord. Jan. 31.

PEARCE, GEORGE W., Swaffham. King's Lynn. Pet. Feb. 1. Ord. Feb. 1.

ROBERTSON, JAMES F., Chesterfield. Sheffield. Pet. Jan. 9. Ord. Jan. 30.

TRANTER, GEORGE, Great Grimsby. Great Grimsby. Pet. Jan. 30. Ord. Jan. 30.

WATMOUGH, ARTHUR A., Leeds. Leeds. Pet. Jan. 31. Ord. Jan. 31.

WICKES, GEORGE F., Coventry. Coventry. Pet. Jan. 31. Ord. Jan. 31.

WIESE, CARL, Guildford-st. High Court. Pet. June 21. Ord. Jan. 30.

WILCOCKSON, HAROLD. Doncaster. Sheffield. Pet. Jan. 31. Ord. Jan. 31.

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